

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2011-06-02-02 / NON-PRECEDENTIAL
ID: P-10-1627-H
DATE: JUNE 2, 2011
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND and WIFE (“Protestants”) appear pro se.¹ The Account Maintenance Division (“Division”), Oklahoma Tax Commission, appears by OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On November 18, 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 December 7, 2010, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division.

On December 10, 2010, a letter was mailed to the Protestants stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-10-1627-H. The letter also advised the Protestants a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.⁴

On January 19, 2011, the Notice of Prehearing Conference was mailed to the last-known address of the Protestants stating the prehearing conference was set for February 8, 2011, at 10:30 a.m.⁵

On February 8, 2011, at 10:30 a.m. the prehearing conference was held as scheduled. The Protestants failed to appear at the prehearing conference. OTC ATTORNEY appeared via

¹ “[P]ro se” (proh say or see), adv. & ad. [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. 2011). The notice was mailed to the Protestants at ADDRESS.

telephone. On February 15, 2011, the Prehearing Conference Order was mailed to the parties directing the Division's to file a verified response on or before March 10, 2011, and advising the Protestants could file a written response on or before March 25, 2011.

On March 4, 2011, the Division's *Verified Response* was filed with Exhibits A through F attached thereto. The Verification attached to the Division's *Verified Response* was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Credits and Refunds Section, Account Maintenance Division, Oklahoma Tax Commission.⁶ No response was received from the Protestants.

The record in this matter was closed and this case was submitted for decision on March 28, 2011.

FINDINGS OF FACTS

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the protest, and the Division's *Verified Response*, the undersigned finds:

1. On September 21, 2009, the Tax Commission received the Protestants' 2004 Individual Income Tax Return (Form 511) ("2004 Return"), which reflects a refund of \$410.00.⁷

2. On October 5, 2009, the Division mailed an adjustment letter⁸ to the Protestants which states in pertinent part as follows, to-wit:

YOUR 2004 OKLAHOMA INCOME TAX REFUND HAS BEEN BARRED BY STATUTE SINCE YOUR CLAIM WAS NOT FILED WITHIN THE ALLOCATED TIME OF THREE YEARS FROM THE DATE DUE. (SEE TITLE 68 O.S. 1981, SEC. 2373). (Emphasis original.)

3. On November 18, 2009, the Taxpayer Assistance Division received a protest to the Division's denial of the refund on the Protestants' 2004 Return. The Protestants acknowledge that the 2004 Return was filed late but state, "The cost of preparing the taxes was more than we could afford. We are doing our very best to get current on all of our taxes."⁹

⁶ See OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

⁷ Division's Exhibit B.

⁸ See Division's *Verified Response* at 2. The Administrative Law Judge is taking judicial notice of the Tax Commission's standard practice to complete the factual details and background of this matter. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999). A copy of the "recreation of the computer generated notice" is part of the court file.

⁹ Division's Exhibit C.

4. On September 3, 2010, the Division notified the Protestants by letter,¹⁰ which in pertinent part states as follows, to-wit:

Per 710:50-9-2. WHEN A REFUND IS BARRED BY STATUTE OF LIMITATIONS;

When an original return has not been filed, the Commission will not issue a refund on an original Individual Income Tax Return filed 3 years after the original due date of the return.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.¹¹

2. In the event that the completed return of the taxpayer discloses a refund to be due by reason of the credits for withholding and/or estimated taxes previously paid, the filing of such tax return shall constitute a claim for refund of the excess.¹²

3. The amount of an income tax refund shall not exceed the amount of tax paid during the three (3) years immediately preceding the filing of a claim for refund.¹³

4. For the 2004 tax year, “All returns, except corporate 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.”¹⁴

5. With exceptions not pertinent in this matter, when an original return has not been filed, the Tax Commission will not issue a refund on a return that is filed more than three (3) years after the original due date of the return.¹⁵

¹⁰ Division’s Exhibit D.

¹¹ OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

¹² OKLA. STAT. ANN. tit 68, § 2385.10 (West 2001).

¹³ OKLA. STAT. ANN. tit. 68, § 2373 (West 2001), which in pertinent part states as follows, to-wit:

...the 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....

See OKLA. ADMIN. CODE § 710:50-9-2:

When an original return has not been filed, the Commission will not issue a refund on an original Individual Income Tax Return filed 3 years after the original due date of the return. A refund that is “barred by statute” cannot be used as payment on any delinquent account or applied to estimated tax. Exceptions to the statute of limitations set out in 710:50-5-13 also apply to certain refund situations. [See: 68 O.S. § 2373]

¹⁴ OKLA. STAT. ANN. tit. 68, § 2368(G) (West 2001).

6. The Oklahoma Supreme Court held in *Neer v. State ex rel. Oklahoma Tax Com'n*, 1999 OK 41, 982 P.2d 1071, ¶ 11 as follows, to-wit:

§ 2373 . . . is analogous to a statute of repose and the Legislature, by unmistakable language, intended § 2373 to act 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 short, the relevant terms of § 2373 clearly evidence a legislative intent to craft an outer limit time boundary beyond which a taxpayer's right or ability to recover a refund no longer exists.

7. The rules promulgated pursuant to the Administrative Procedures Act¹⁶ are presumed to be valid and binding on the persons they affect and have the force of law.

8. General principles of equity may not override statutory requirements for timely filing of tax refund claims.¹⁷ 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.¹⁸

9. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.¹⁹ A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.²⁰

¹⁵ See Note 13. See also OKLA. STAT. ANN. tit. 68, § 216 (West 2001).

¹⁶ OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002).

¹⁷ OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). See *Republic Petroleum Corp. v. United States*, 613 F.2d 518.

¹⁸ OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). See *Jones v. Liberty Glass Co.*, 332 U.S. 524.

¹⁹ 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.

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.

²⁰ See *Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

DISCUSSION

The Protestants acknowledge that the 2004 Return was filed late, but cite equitable reasons due to the cost of having the 2004 Return prepared.²¹

The original due date of the Protestants' 2004 Return was April 15, 2005.²² Pursuant to Section 2373(c) of Title 68 and Tax Commission Rule 710:50-9-2,²³ the statutorily prescribed time period for the Protestants to request a refund on the 2004 Return was April 15, 2008. The Protestants filed their 2004 Return on September 21, 2009, which is more than three (3) years from the due date of the 2004 Return.

“General principles of equity may not override statutory requirements for timely filing of tax refund claims.”²⁴

The Protestants have failed to meet their burden of proof that the Division's denial of the refund for the 2004 Return was incorrect and in what respect.

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.”

²¹ *See* Note 9, *supra*.

²² *Matlock v. Oklahoma Tax Com'n*, 2001 OK CIV APP 104, 29 P.3d 614.

²³ *See* Note 13, *supra*.

²⁴ *See* Notes 17 through 18, *supra*.