

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2011-06-07-06 / NON-PRECEDENTIAL
ID: P-10-1634-H
DATE: JUNE 7, 2011
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT (“Protestant”) appears pro se.¹ The Account Maintenance Division (“Division”), Oklahoma Tax Commission, appears by OTC ATTORNEY 1, Assistant General Counsel, and OTC ATTORNEY 2, 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 1 and OTC ATTORNEY 2 filed an Entry of Appearance as Co-Counsel of record for the Division. On December 10, 2010, a letter was mailed to the Protestant stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-10-1634-H. The letter also advised the Protestant 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 Protestant stating the prehearing conference was set for February 15, 2011, at 2:00 p.m.⁵

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.

On February 15, 2011, at 2:00 p.m. the prehearing conference was held as scheduled. The Protestant failed to appear at the prehearing conference. OTC ATTORNEY 1 appeared via telephone. On February 22, 2011, the Prehearing Conference Order was mailed to the parties directing the Division to file a verified response on or before March 24, 2011 and advising the Protestant could file a written response on or before April 8, 2011. On March 24, 2011, the Division's *Verified Response* was filed with Exhibits A through H 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 Protestant.

The record in this matter was closed and this case was submitted for decision on April 11, 2011.

FINDINGS OF FACT

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 April 8, 2010, the Protestant filed his 2008 Oklahoma Individual Income Tax Return ("2008 Return") as "Single." The 2008 Return reflects Federal Adjusted Gross Income of \$19,441.00, the Protestant as an exemption, with the standard deduction of \$3,250.00. The 2008 Return reported a refund of income tax due of \$73.00, after all credits for withholding (\$636.00), and sales tax relief credits (\$40.00).⁷

2. Attached to the 2008 Return to substantiate the \$40.00 in sales tax relief credit was Protestant's 2008 Oklahoma Form 538-S ("538-S"), Oklahoma Claim for Credit or Refund of Sales Tax. On the 538-S the Protestant reported a "Total Gross Household Income" of \$19,976.00.⁸

3. Sometime after the filing of the 2008 Return, the Division of the Tax Commission notified Protestant his 2008 Return had been examined and adjusted disallowing the sales tax relief credits claimed. According to the Division, a copy of the "Adjustment Letter" is not in the file and, apparently, it is not accessible at this time. "The Protestant is on notice his claim was denied because he filed a protest." The sales tax credits were disallowed⁹ as follows, to-wit:

2008 FORM 511		REPORTED	ADJUSTED
LINE 27	SALES TAX CREDIT	40.00	0.00
LINE 30	TOTAL REFUNDABLE CREDITS	676.00	636.00
LINE 31	OVERPAYMENT OF INCOME TAX	73.00	33.00
LINE 35	REFUND	73.00	33.00

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

⁷ Division's Exhibit C.

⁸ *Id.*

⁹ Division's Exhibit D.

4. On April 26, 2010, the Division received the protest,¹⁰ which states as follows, to-wit:

I [Protestant] disagree with the adjustments made on my return for 2008. I had done my taxes on April 15, 2009, electronically at CAP at SHOPPING CENTER. *But they failed to submit. I didn't find out about it until I went to do my 2009 taxes.* I will enclose a copy of that as proof. (Emphasis added.)

5. On September 14, 2010, the Division responded by letter¹¹ in pertinent part:

In the instructions for the form, it states that your return claiming the sales tax credit must be filed no later than April 15, 2009.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.¹²

2. The eligibility requirements and claim procedures for obtaining the refundable income tax credit are governed by the "Sales Tax Relief Act" (the Act).¹³ For the calendar years following 2008, an individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made may file a claim for sales tax relief if the gross household income for such year does not exceed the following amounts, to-wit:

For an individual claiming one or more allowable personal exemptions other than the allowable personal exemption for that individual ... Fifty Thousand Dollars (\$50,000.00).¹⁴

3. For purposes of the act "Gross Household Income" means the gross amount of income of every type, regardless of the source, received by all persons occupying the same household, whether such income was taxable or nontaxable for federal or state income tax purposes, including pensions, annuities, federal social security, unemployment payments, veterans' disability compensation, public assistance payments, alimony, support money, worker's compensation, loss-of-time insurance payments, capital gains and any other type of income received; and excluding gifts.¹⁵

¹⁰ Division's Exhibit E. A copy of the letter dated April 15, 2009, from the Community Action Project of Tulsa County is attached. The letter in pertinent part states "Your OK state return was filed electronically."

¹¹ Division's Exhibit F.

¹² OKLA. STAT. ANN. tit. 68, § 5015 (West 2001).

¹³ OKLA. STAT. ANN. tit. 68, §§ 5010 to 5016 (West 2001).

¹⁴ OKLA. STAT. tit. 68, § 5011(C)(2) (West Supp. 2004).

¹⁵ OKLA. STAT. ANN. tit. 68, § 5012 (West 2001).

4. All claims for relief authorized by the Sales Tax Relief Act¹⁶ shall be received by and in the possession of the Oklahoma Tax Commission on or before June 30 of each year for sales taxes paid for the preceding calendar year. Claimants shall be allowed a direct credit against income taxes owed by such claimant to the State of Oklahoma for the amount of such claim, in which case such claim shall be filed with the income tax return of the claimant on or before April 15 following the close of the taxable year, unless the claimant has been granted an extension of time in order to file an income tax return, in which case the claim may be filed with the return filed pursuant to the extension.¹⁷

5. “Tax exemption, deductions, and credits depend entirely on legislative grace and are strictly construed against the exemption, deduction or credit.”¹⁸

6. Legislative intent controls statutory interpretation.¹⁹ Intent is ascertained from the whole act in light of its general purpose and objective considering relevant provisions together to give full force and effect to each.²⁰ The Court presumes that the Legislature expressed its intent and that it intended what is expressed.²¹

7. Statutes are interpreted to attain that purpose and end championing the broad public policy purposes underlying them.²² Only where the legislative intent cannot be ascertained from the statutory language, i.e., in cases of ambiguity or conflict, are rules of statutory construction employed.²³ However, where the statutory language is ambiguous or uncertain, a construction is applied to avoid absurdities.²⁴ Statutory construction presents a question of law.²⁵

8. General principles of equity may not override statutory requirements for timely filing of tax refund claims.²⁶ 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.²⁷

¹⁶ See Note 13, *supra*.

¹⁷ OKLA. STAT. ANN. tit. 68, § 5013(A) (West Supp. 2011).

¹⁸ *TPQ Inv. Corp. v. State ex rel. Oklahoma Tax Com’n*, 1998 OK 13, 954 P.2d 139 See *Oklahoma Fixture Company v. Oklahoma Tax Commission*, 1998 OK CIV APP 106, 966 P.2d 206.

¹⁹ *World Publishing v. Miller*, 2001 OK 49, ¶7, 32 P.3d 829.

²⁰ *Id.* at ¶7.

²¹ *Id.* at ¶7.

²² *Id.* at ¶7.

²³ *Id.* at ¶7.

²⁴ *Id.* at ¶7.

²⁵ *Blitz U.S.A., Inc. v. Oklahoma Tax Com’n*, 2003 OK 50, 75 P.3d 883.

²⁶ OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). See *Republic Petroleum Corp. v. United States*, 613 F.2d 518.

9. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.²⁸
10. A proposed assessment (adjustment) is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.²⁹

DISCUSSION

The Protestant does not dispute that his 2008 Return was not timely filed, but cites equitable reasons for the failure of the 2008 Return to be timely filed for purposes of receiving the sales tax credit.

The Protestant has failed to meet his burden of proof in this matter that the Division's adjustment to his 2008 Return is 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 to the Division's denial of the sales tax credit (\$40.00) 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.

²⁷ OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). *See Jones v. Liberty Glass Co.*, 332 U.S. 524.

²⁸ 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.

²⁹ *See Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

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.”