

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2011-06-21-03 / NON-PRECEDENTIAL
ID: P-10-1633-K
DATE: JUNE 21, 2011
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A *Prehearing Conference Notice* (“*Notice*”) was served on Protestants, PROTESTANTS, at their last known address¹. Protestants did not respond to the *Notice* or appear at the conference. 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 an original joint 2005 Oklahoma resident income tax return on or about January 14, 2010², claiming an income tax refund due to excess withholding in the amount of \$880.00. The Division by letter dated February 11, 2010, notified Protestants that the refund was barred by statute. Protestants timely protested the Division’s notice. An oral hearing was not requested.

On November 18, 2010, the Division referred the protest to the Office of the Administrative Law Judges for further proceedings pursuant to the Uniform Tax Procedure Code³ and the Rules of Practice and Procedure before the Office of Administrative Law Judges⁴. The case was docketed as Case No. P-10-1633-K and assigned to ALJ, Administrative Law Judge.⁵

A pre-hearing conference was scheduled for January 13, 2011, by the *Notice* issued December 10, 2010.⁶ Protestants neither appeared at the conference nor responded to the *Notice*. By *Prehearing Conference Order* (“*Order*”) issued January 14, 2011, the Division was directed to file a verified response to protest no later than February 25, 2011 and Protestants were advised that a reply to the response could be filed on or before March 28, 2011. The *Order* further directed that if an oral hearing was not requested, the record would be closed and the protest

¹ 68 O.S. Supp. 2009, § 208.

² Signature date reflected on return.

³ 68 O.S. 2001, § 201 et seq., as amended.

⁴ Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* (“*OAC*”).

⁵ *OAC*, 710:1-5-22(b).

⁶ *OAC*, 710:1-5-28(a).

submitted for decision upon completion of the announced procedural schedule⁷. Protestants did not respond to the *Order*.

The *Account Maintenance Division's Verified Response* ("Verified Response") was filed February 28, 2011. Attached thereto were Exhibits A.1 through G.2. Protestants did not file a reply to the *Verified Response*. On April 11, 2011, the record was closed and the protest was submitted for decision.⁸

FINDINGS OF FACT

Upon review of the file and records, including the *Verified Response* and attached exhibits, the undersigned finds⁹:

1. Protestants filed an original joint 2005 Oklahoma resident income tax return on or about January 14, 2010, as reflected by the signature dates on the return. An income tax refund of \$880.00 due to excess withholding was claimed on the return. Exhibit B.

2. The Division by letter dated February 11, 2010, notified Protestants that the refund was barred by statute. Exhibit C.

3. Protestants timely protested the Division's notice, asserting:

We were not aware that your records showed that we had not filed for [2005]. Had we been aware of this problem, we most certainly would have resolved the issue immediately. Our tax preparer * * * had received confirmation from you. Her records do show that you had received our return, however she has destroyed any papers regarding your confirmation due to space restrictions. The computer program she uses will not print the confirmation out, although it does show up on the screen.

Protestants did not request an oral hearing in the protest letter. Exhibit D.1.

4. The amount in controversy is \$880.00.

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).

⁷ OAC, 710:1-5-28(b).

⁸ OAC, 710:1-5-39.

⁹ Unless otherwise noted, references to exhibits are to the exhibits attached to the *Verified Response*.

2. The refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act, 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.

3. 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 legislatively crafted outer limit time boundary beyond which taxpayers' right to recover a refund no longer exists.

4. 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 are due on or before the 15th day of April following the close of the taxable year." 68 O.S. 2001, § 2368(G).

5. Tax year 2005 income tax returns made on the basis of a calendar year were due and the estimated and/or withheld income taxes paid with respect to the year were deemed paid on April 17, 2006. OAC, 710:50-3-3(a); Exhibit A. To be timely, a claim for refund for the 2005 tax year was required to be filed on or before April 17, 2009. 68 O.S. 2001, § 2373.

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. General principles of equity may not override statutory requirements for timely filing of tax refund claims. See, *Duncan Medical Services v. State ex rel. Oklahoma Tax Commission*, 1994 OK 91, 911 P.2d 247, 250, citing *Western Auto Supply Company v. Oklahoma Tax Commission*, 1958 OK 144, 328 P.2d 414, 420.

8. In all administrative proceedings the burden of proof is on Protestant to show in what respect the action or proposed action of the Oklahoma Tax Commission is incorrect. OAC, 710:1-5-47. See, *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359, 362, citing *Continental Oil Co. v. Oklahoma State Bd. of Equalization*, 1976 OK 23, 570 P.2d 315, 317.

9. Protestants failed to come forward with any evidence to prove the allegation that their 2005 Oklahoma income tax return was timely filed. Protestants' 2005 income tax claim for refund is barred by the provisions of § 2373.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestants, PROTESTANTS, 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.”