JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2012-07-10-02 / NON-PRECEDENTIAL**
ID: **P-11-618-K**
DATE: **JULY 10, 2012**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestants, HUSBAND and WIFE are represented by ATTORNEY, Attorney at Law. The Account Maintenance Division of the Oklahoma Tax Commission (hereinafter "Division"), previously represented by OTC ATTORNEY 1, Assistant General Counsel, is represented by OTC ATTORNEY 2, Deputy General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

Protestants filed joint Oklahoma non-resident income tax returns for tax years 2006 and 2007 on May 26, 2011. The returns reflect signature dates of May 19, 2011 and May 23, 2011, respectively. The returns claimed refunds in the aggregate amount of $16,591.00. The Division by letters of July 14, 2011 and September 8, 2011, notified Protestant that the refunds were denied as barred by statute, respectively. Protestants timely protested the denials by letter dated September 8, 2011. Protestants have not requested a hearing.

On September 22, 2011, the Division referred the protest to the Office of the Administrative Law Judges for further proceedings pursuant to the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Office of Administrative Law Judges[2]. The case was docketed as Case No. P-11-618-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled for February 1, 2012, by *Prehearing Conference Notice* issued January 10, 2012.[4] Pursuant to the conference, a *Prehearing Conference Order* was issued setting forth the procedure by which the protest would be submitted for decision.[5]

The *Division's Motion for Summary Disposition* ("*Motion*") was filed March 5, 2012.[6] A verification of the statement of facts and Exhibits A through I were attached to the *Motion*. *Protestant's [sic] Opposition to Division's Motion for Summary Disposition* ("*Response*") was

[1] 68 O.S. 2011, § 201 et seq., as amended.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[3] *OAC*, 710:1-5-22(b).

[4] *OAC*, 710:1-5-28(a).

[5] *OAC*, 710:1-5-28(b).

[6] *OAC*, 710:1-5-38.

filed April 6, 2012, with several documents attached. By *Order Granting Proposal for Submission of Protest for Decision by Summary Disposition* issued April 9, 2012, the record was closed and the protest was submitted for decision.[7]

FINDINGS OF FACT

Upon review of the file and records, including the *Motion* and attached exhibits, and the *Response* and attachments, the undersigned finds:

1. The facts material to the disposition of the protest 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 AS TO WHICH NO GENUINE CONTROVERSIES EXIST[8], are:

> 1. Protestants filed their 2006 and 2007 Joint Oklahoma Non-Resident Returns using Forms 511 NR ("2006 Return" and "2007 Return," [sic] respectively) with OTC[9] on May 26, 2011.
>
> 2. The due date for filing an original 2006 Individual Income Tax Return was April 16, 2007. The due date for filing an original 2007 Individual Income Tax Return was April 15, 2008.
>
> 3. The 2006 Return claimed a refund in an amount of $9,766.00. The claimed refund consisted of an overpayment of withholding tax in an amount of $4,766.00 and estimated tax payments in an amount of $5,000.00.
>
> 4. The 2007 Return claimed a refund in an amount of $6,825.00. The claimed refund consisted of an overpayment of withholding[10] tax in an amount of $7,000.00.
>
> 5. On July 14, 2011, Division sent a letter to Protestants barring their 2006 refund.
>
> 6. On or about September 7, 2011, Protestants provided a copy of the 2006 Form 1099 MISC to substantiate the withholding claimed on the 2006 Return. The 2006 Return was "corrected" to allow for the withholding, but the refund remained barred.
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> 7. On or about September 8, 2011, Protestants provided a copy of the 2007 Form 1099 MISC to substantiate the withholding claimed on the 2007 Return. The 2007 Return was "corrected" to allow for the withholding but the refund remained barred.

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[7] *OAC*, 710:1-5-39(a).

[8] References to exhibits submitted in support of the statements are omitted.

[9] Acronym for Oklahoma Tax Commission.

[10] Footnote original to *Motion*. The note provides: "[t]he 2007 Return claims that Protestants made estimated payments of $7,000.00, when in reality the $7,000.00 was royalty withholding."

8. On September 8, 2011, Division sent a letter to Protestants barring their 2007 refund.

9. On September 8, 2011, Protestants sent a Verified Protest Letter to the Taxpayer Assistance Division of OTC protesting the denial of the 2006 and 2007 refund claims.

10. On October 4, 2011, Division acknowledge receipt of the protest letter but maintained its position that the refunds were statutorily barred because the returns were not filed within the three year provision in 68 O.S. 2001, § 2373.

11. On November 8, 2011, Protestants sent a second protest letter requesting Division reconsider its position and allow the refunds due to medical reasons. The letter attached a copy of a medical evaluation report dated July 28, 2006, from HUSBAND'S physician enumerating a number of the health problems HUSBAND was experiencing in 2006.

12. The total amount in controversy is $16,591.00.

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. 2011, § 207.

2. The issue presented for decision is whether Protestants' 2006 and 2007 income tax refunds, filed May 26, 2011 are barred by statute.

3. The refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act ("Act")[11], 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 legislatively crafted outer limit time boundary beyond which taxpayers' right to recover a refund no longer exists.

[11] 68 O.S. 2011, § 2351 et seq., as amended.

5. State income tax is due at the time of transmitting the return required under the Act. 68 O.S. 2011, § 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. 2011, § 2368(G).

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 2006 and 2007 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 or about April 16, 2007 and April 15, 2008, respectively. See, *OAC*, 710:50-3-3(a). To be timely, a claim for refund for the 2006 tax year was required to be filed on or before April 16, 2010 and for the 2007 tax year on or before April 15, 2011. 68 O.S. 2011, § 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 (5th Cir. 1980).

9. Protestants assert that a significant amount of the refunds at issue constitute a carry forward of taxes paid credit which they could have received as refunds since returns were timely filed, but allowed the Commission to keep and apply to subsequent tax year obligations. While Protestants' assertion is not as articulate as that advanced by the Matlocks, the substance is the same. In ***Matlock v. State ex rel. Oklahoma Tax Commission***, 2001 OK CIV APP 104, 29 P.3d 614, the Court of Appeals summarily denied taxpayers' constructive or implied trust proposition, holding: "[t]he doctrine of a constructive trust does not apply here as there is no showing of wrongdoing by the OTC, rather the Matlocks, themselves, are the ones who did not timely file their refund claim." Id., at ¶ 5. Similarly, there is no showing in this matter of any wrongdoing by the Division, rather Protestants failed to timely file their refund claims.

10. Protestant further assert that they are out-of-state residents unfamiliar with the tax laws of the State of Oklahoma, but they took it upon themselves to file proper returns in prior tax years despite the Commission lack of assistance.

Taxpayers are charged with knowledge of the laws that affect them. Oklahoma Tax Commission Order No. 2006-03-23-07 (Prec.), *citing Ponder v. Ebey*, 1944 OK 271, 194 Okla. 407, 152 P.2d 268; *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 64 S.Ct. 599 (1994). Ignorance of the law, standing alone, is no defense. The rule, long-standing and well-known, is found in ***Campbell v. Newman***, 1915 OK 538, ¶3, 151 P. 602, 603 which cites *Utermehle v. Norment*, 197 U.S. 40, 25 S.Ct. 291, 49 L.Ed. 655 (1905), "[w]e know of no case where mere ignorance of the law, standing alone, constitutes any excuse or defense against its enforcement. It would be impossible to administer the law if ignorance of its provisions were a defense thereto."

11. Protestant finally assert that the deadline for filing the returns was legally extended and the three (3) year limitation period to file their Oklahoma returns began to run from the extended date.

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[12]; and does not extend the provisions of § 2373, ***Matlock***, *supra at* ¶ 2.

12. Protestants' 2006 and 2007 income tax refunds are barred by operation of law.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest to the denial of the income tax claims for refund 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 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."

[12] Estimated or withheld income taxes are deemed paid on the due date of the return notwithstanding a federal or Oklahoma extension, citing § 216.