JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2012-07-24-04 / NON-PRECEDENTIAL**
ID: **P-11-464-H**
DATE: **JULY 24, 2012**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 20th day of April, 2012, the Commission denies the request of the Account Maintenance Division for an En Banc Hearing and makes the following Findings of Fact and Conclusions of Law and enters the following order.

PROCEDURAL HISTORY

On June 21, 2011, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[1] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[2] On June 24, 2011, OTC ATTORNEY 1 and OTC ATTORNEY 2 filed an Entry of Appearance as Co-Counsel for the Account Maintenance Division of the Oklahoma Tax Commission.

On July 13, 2011, a letter was mailed to the Protestant stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-11-464-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.*[3]

On September 8, 2011, the Notice of Prehearing Conference was mailed to the parties setting the prehearing conference for September 26, 2011, at 10:00 a.m. The notice was mailed to the Protestant's last-known address.[4]

The prehearing conference was held as scheduled on September 26, 2011, at 10:00 a.m. The Protestant appeared in person. OTC ATTORNEY 1 and OTC ATTORNEY 2 appeared via

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[1] OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2001).

[2] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[3] *Id.*

[4] The notice was mailed to ADDRESS. OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012). This spelling of the street name is correct. The spelling on the return for the 2007 Tax Year of "MIS-SPELLED STREET NAME" is incorrect and therefore is incorrect in the records of the Tax Commission.

telephone. On September 26, 2011, a letter was mailed to the parties directing that a status report be filed on or before October 26, 2011.

On October 28, 2011, the Division filed the Status Report (two (2) days out-of-time) advising that no progress had been reached between the parties in resolving the case. The Division requested that a scheduling order be issued setting a deadline for the Division to file a Motion for Summary Disposition.

On November 23, 2011, the Scheduling Order ("*Notice*") was issued advising that the Division could file a Motion for Summary Disposition on or before December 23, 2011, and that within fifteen (15) days the Protestant could file a response thereto.

On December 23, 2011, the Division filed its Motion for Summary Disposition ("*Motion*"), with Exhibits A through C attached thereto. The *Verification* attached to the Division's *Motion* was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Supervisor, Case Management Section, Account Maintenance Division, Oklahoma Tax Commission.[5]

On February 24, 2012, a letter was mailed to the parties acknowledging the filing of the Division's *Motion* and that the Protestant had failed to file a response to the Division's *Motion*. The parties were advised that the record in this matter was closed and the Division's *Motion* was submitted for ruling on February 24, 2012.

FINDINGS OF MATERIAL FACTS AS TO WHICH THERE IS NO CONTROVERSY

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

1. According to the records of the Tax Commission, on April 18, 2011, the Protestant's Oklahoma Income Tax Return (Form 511) was filed for the 2007 Tax Year, which reflects a refund of $515.00.[6]

[5] *See* OKLA. ADMIN. CODE § 710:1-5-38(b)(1) (June 25, 2009).

[6] Division's Exhibit A. The return is also dated April 18, 2011. The Administrative Law Judge is taking judicial notice of the materials contained in the court file to complete the factual background and details of this matter. In the court file there is a copy of the "Income Tax Inquiry Browse Screen," which reflects the return for the 2007 Tax Year was filed April 18, 2011. No date or mailroom stamp appears on the return itself. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999).

2. On May 11, 2011, the Division notified the Protestant by letter,[7] which in pertinent part, states as follows, to-wit:

> YOUR 2007 OKLAHOMA INCOME TAX REFUND HAS BEEN BARRED BY STATUE 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).

3. On June 5, 2011, by facsimile, the Division received a written protest to the denial of the $515.00 refund for the 2007 Tax Year. The grounds for the protest are two-fold. First, Protestant was advised by his accountant that the deadline to file for the 2007 Tax Year was April 18, 2011, and secondly, equitable reasons as more fully set forth therein.[8]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[9]

2. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.[10]

3. A party may file a motion for summary disposition on any or all issues on the ground that there is no substantial controversy as to any material fact.[11] The procedures for such motion are as follows:

> (1) The motion for summary disposition shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.
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> (2) If the protest has been set for hearing, the motion shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the Administrative Law Judge establishes an earlier deadline. The motion shall be served on all parties and filed with the Office of the Administrative Law Judges.

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[7] Exhibit B, which is a "recreated" letter.

[8] Division's Exhibit C.

[9] OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

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

[11] OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

(3) Any party opposing summary disposition of issues shall file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

(4) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material.

(5) If the taxpayer has requested a hearing, the Administrative Law Judge will issue a notice to the parties scheduling the motion for a hearing limited to oral argument. If the taxpayer has not requested a hearing, the Administrative Law Judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.

(6) If the Administrative Law Judge finds that there is no substantial controversy as to the material facts *and that one of the parties is entitled to a decision in its favor as a matter of law*, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law and Recommendations are subject to review by the Commission pursuant to *OAC* 710:1-5-10, 710:1-5-40 and 710:1-5-41. If a motion for summary disposition is denied, the Administrative Law Judge will issue an order denying such motion.

(7) If the Administrative Law Judge finds that there is no substantial controversy as to certain facts or issues, the Judge may grant partial summary disposition by issuing an order which specifies the facts or issues which are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the Administrative Law Judge. (Emphasis added.)

4. 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]

5. 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]

6. Section 2368(G)(1) and (2) [14] of Title 68 provide, in pertinent part:

> 1. All returns, except corporate returns and individual returns filed electronically, made on the basis of the calendar year shall be made on or before the fifteenth day of April following the close of the taxable year. Provided, if the Internal Revenue Code provides for a later due date for returns of individuals, the Tax Commission shall accept returns filed by individuals by such date and such returns shall be considered as timely filed.
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> 2. All individual returns filed electronically, made on the basis of the calendar year, shall be due on or before the twentieth day of April following the close of the taxable year.

7. Section 2375(A) of Title 68[15] provides, in pertinent part:

> …Provided, if the Internal Revenue Code provides for a later due date for returns of individuals, the Tax Commission shall accept payments made with returns filed by individuals by such date and such payments shall be considered as timely paid.

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

[13] OKLA. STAT. ANN. tit. 68, § 2373 (West 2001), which states in pertinent part:

> …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. tit. 68, § 2368(G)(1) (West 2007).

[15] OKLA. STAT. tit. 68, § 2375(A) (West 2007).

8. The Oklahoma Administrative Code[16] provides:

> (a) Income Tax Returns of individuals are due on the 15th day of the fourth month following the close of the taxable year unless the returns are filed electronically. If the individual income tax returns are filed electronically, the returns are due on the 20th day of the fourth month following the close of the taxable year. This change to the due date will be effective for tax year 2007 returns and subsequent tax years.
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> (b) If the Internal Revenue Code provides for a later due date for returns of individual filers, the Oklahoma income tax returns may be filed by the later due date and will be considered timely filed. This change to the due date will be effective for tax year 2007 returns and subsequent tax years.
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> (c) Income Tax Returns of corporations are due on the 15th day of the third month following the close of the taxable year.
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> (d) To be considered timely filed, Income Tax Returns are to be filed with and received by the Oklahoma Tax Commission at 2501 Lincoln Blvd., Oklahoma City, Ok. 73194-0009 on or before the statutory filing date. However, dates placed on returns by the Oklahoma Tax Commission corresponding to postmarks that indicate timely mailing will be accepted as timely filed. In the case of electronically filed returns, any payment of taxes due on the 20th day of the fourth month following the close of the taxable year must also be remitted electronically in order to be considered timely paid. If balances due on electronically filed returns are not remitted to the Oklahoma Tax Commission electronically, penalty and interest will accrue from the 15th day of the fourth month following the close of the taxable year.

9. 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.[17]

10. 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.[18]

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[16] OKLA. ADMIN. CODE § 710:50-3-3 (July 1, 2008).

[17] OKLA. STAT. ANN. tit. 68, § 2385.10 (West 2001).

[18] OKLA. STAT. ANN. tit. 68, § 2375(H) (West Supp. 2012):

> 1. The period of time prescribed in Section 223 of this title, in which the procedures for the assessment of income tax may be commenced by the Tax Commission, shall be tolled and extended until the amount of taxable income for any year of a taxpayer under the Internal Revenue Code has been finally determined under applicable federal law and for the additional period of time hereinafter provided in this subsection.

11. Terms in a statute are given their plain and ordinary meaning, except when a contrary intention plainly appears. Words of a statute should generally be assumed to be used by the law-making body as having the same meaning as that attributed in ordinary and usual parlance. Where neither ambiguity nor doubt exists, even the rule that weight is to be given to an administrative construction is inapplicable in interpreting statute; administrative construction cannot override plain statutory language. Rule that tax statutes are to be construed in favor of the taxpayer does not apply if the statute at issue contains no inconsistent provisions, no ambiguities, and no uncertainties.[19]

12. Statute providing for refund of portion of state income tax paid during three years immediately preceding filing of refund claim is akin to statute of repose and was intended to act as substantive limitation on right to recover any amount as refund when claim is filed beyond that time period.[20]

13. A "statute of limitation" extinguishes a remedy for an existing right by penalizing a party who sleeps on that right. Statute of limitation is a procedural device and does not start to run until a cause of action accrues, i.e. at that point in time a plaintiff can successfully prove the elements of his/her claim.[21]

14. A "statute of repose" sets an outer chronological time boundary beyond which no cause of action may arise for conduct that would otherwise have been actionable. A "statute of repose" begins to run from a date certain, regardless of when a plaintiff may be able to bring a cause of action to successful conclusion.[22]

15. As the Supreme Court of Oklahoma stated in *Neer*,[23] "We hold when none of the statutorily delineated exceptions apply, as none do here, § 2373 acts in a manner analogous to a

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> 2. If, in such final determination, the amount of taxable income for any year of a taxpayer under the Internal Revenue Code is changed or corrected from the amounts included in the federal return of the taxpayer for such year and such change or correction affects the Oklahoma taxable income of the taxpayer for such year, the taxpayer, within one (1) year after such final determination of the corrected taxable income, shall file an amended return under Section 2351 et seq. of this title reporting the corrected Oklahoma taxable income, and the Tax Commission shall make assessment or refund within two (2) years from the date the return required by this paragraph is filed and not thereafter, unless a waiver is agreed to and signed by the Tax Commission and the taxpayer.
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> …

See OKLA. STAT. ANN. tit. 68, § 216 (West 2001).

[19] *Neer v. State ex rel. Oklahoma Tax Com'n*, 1999 OK 41, 982 P.2d 1071.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

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. Further, during the three year period specified in § 2373 taxpayers had available adequate avenues by which to protect their ability to obtain an Oklahoma income tax refund, but they failed to avail themselves of such avenues." (Emphasis added.)

16. Three year period during which taxpayers could request refund commenced on original due date of tax return, not on extended date taxpayers received when they filed for an extension of time.[24]

17. General principles of equity may not override statutory requirements for timely filing of tax refund claims.[25] 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.[26]

ISSUE

Is a Motion for Summary Disposition deemed confessed when a party fails to file a response?

The Tax Commission Rule on Motions for Summary Disposition ("*MSD Rule*")[27] became effective June 25, 2009. Prior to that date the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*[28] did not make this procedural device available to the parties. The *MSD Rule* provides in pertinent part, "Any party opposing summary disposition of issues *shall* file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion."[29] (Emphasis added.) Notice was given to the Protestant at his last-known address,[30] but the Protestant did not respond to the Division's *Motion.*

At first glance, it appears that the Protestant's failure to respond to the Division's *Motion* is grounds in and of itself for the granting of the Division's *Motion*, but the Oklahoma Court of

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[24] *Matlock v. State ex rel. Okl. Tax Com'n*, 2001 OK CIV APP 104, 29 P.3d 614.

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

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

[27] *See* Note 12, *supra*.

[28] *See* Note 3, *supra.*

[29] *See* Note 12, *supra*.

[30] *See* Note 5, *supra.*

Civil Appeals held in the *Spirgis*[31] case, "A party's failure to respond to a motion for summary judgment results not in a confession of judgment, but in admission of all material facts set forth in statement of movant which are supported by admissible evidence." "Granting of summary judgment motion on merits of cause of action is adjudication on merits even when no response is made to motion."[32] The Division's *Motion* is not deemed confessed because the Protestant failed to file a response, but rather all material facts supported by admissible evidence set forth in the Division's *Motion* are admitted.

STANDARD OF REVIEW

An order that grants summary relief, in whole or in part, disposes solely of law questions.[33] Summary judgment should be granted only if it is perfectly clear that there is no material fact at issue. For summary judgment to be appropriate, the trial court must not only find there is no substantial controversy as to any material fact, but also that reasonable people could not reach differing conclusions from the undisputed facts.[34] A fact is material for purposes of summary judgment if proof of the fact would establish or refute an essential element of a cause of action or a defense.[35]

DISCUSSION

The basis of the Division's *Motion* is that pursuant to Section 2373 of Title 68[36] ("*Statute*") and Tax Commission Rule 710:50-9-2 ("*Rule*"),[37] the statutorily prescribed time period for the Protestant to request a refund for the 2007 Tax Year was April 15, 2011. The Division states, "In essence, Protestant argues that the time to seek a refund for the overpayment of 2007 income taxes was extended to April 18, 2011 by operation of federal law. This contention is similar in nature to the position staked out by the taxpayer in *Matlock v. State ex. rel [sic] Oklahoma Tax Commission*, 2001 OK CIV APP 104, 29 P.3d 614, where the taxpayer urged that federal law had extended the time to file income taxes and that the three (3) year limitation period in Section 2373 began to run from the extended date. That contention was rejected by the *Matlock* Court relying upon the *Neer*[38] decision and an OTC rule that provides

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[31] *Spirgis v. Circle K Stores, Inc.*, 1987 OK CIV APP 45, 743 P.2d 682. *See White v. White*, 2007 OK 86, 173 P.3d 78. *See also* OKLA. STAT. ANN. tit. 12, Ch. 2, App., Rule 4 (West 2009).

[32] *Union Oil Company of California v. Board of Equalization of Beckham County*, 1996 OK 40, 913 P.2d 1330.

[33] *Ashikian v. Oklahoma Horse Racing Commission*, 2008 OK 64, 188 P.3d 148.

[34] *Fulton v. People Lease Corporation*, 2010 OK CIV APP 84, 241 P.3d 255.

[35] *Winston v. Stewart & Elder, P.C.*, 2002 OK 68, 55 P.3d 1063.

[36] *See* Note 14, *supra*.

[37] *Id.*

[38] *Motion* at 2-3.

that when an original return has not been filed, any refund based upon that return must be claimed within three (3) years of the date the original return was due. OKLA. ADMIN. CODE (OAC) § 710:50-9-2."[39]

The Claimant's position is stated in pertinent part as follows,[40] to-wit:

> I am asking that I not be penalized for a statute that states a due date of three years, but also the due date of filing was changed in 2011. I was within the deadline according [to] new due date set for 2011; however not within the actual assigned 3 year time frame. I honestly did not realized [sic] that I had 3 years from that years (2007) "due date", not three tax years by the "due date". I was also never advised of this by my accountant who was under the same impression I was, that we had until April 18, 2011.

The Division's description of the Protestant's position is "essentially" correct, that the time to seek a refund for the 2007 Tax Year was extended to April 18, 2011, by "operation of law." However, the Division's *Motion* fails to explain why the time to seek a refund was changed by "operation of law."

In *Neer* and *Matlock*,[41] the Courts note that there was no question that the taxpayers in each of those cases had filed their respective claims for refund more than three years after their returns were filed and the income tax paid beyond the three (3) year time period provided by the *Statute*.[42] In *Matlock*,[43] the taxpayers unsuccessfully argued that the three (3) year time period contained in the *Statute* began to run from the extended date and not the original due date. The Court held that the three (3) year period during which the taxpayers could request a refund commenced on the original due date of the tax return, not on the extended date the taxpayers received when they filed for an extension of time.[44]

In the *Motion* the Division states, "The limitation provision in Section 2373 is substantive in nature and cannot be altered by Federal law *unless so provided by Oklahoma law*."[45] (Emphasis added.) That is why the question of law in this matter differs from *Neer*[46] and

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[39] *Id.*

[40] *See* Note 9, *supra.*

[41] *Id.*

[42] *Id.* In *Neer*, the taxpayers paid the tax when they filed the original return for the 1991 Tax Year on April 15, 1992. On or about November 21, 1995, "corrected" return was filed requesting a credit for $34,732 paid to the State of New York. In *Matlock*, the taxpayers filed their return for the 1993 Tax Year on May 7, 1997.

[43] *See* Note 25, *supra*.

[44] *Id.*

[45] *See* Note 39, *supra*.

[46] *See* Note 20, *supra*.

Matlock.[47] Oklahoma law does provide for alteration of the *Statute*, which is why the *Statute* cannot be read in isolation as suggested by the Division, but the *Statute* must be read in conjunction with the provisions of Sections 2368(G)(1), 2375(A), and Tax Commission Rule 710:50-3-3, all of which contain essentially the same following provision:

> Provided, if the Internal Revenue Code provides for a later due date for returns of individuals, the Tax Commission shall accept returns filed by individuals by such date and such returns shall be considered as timely filed.

For the 2010 Tax Year, the Internal Revenue Service ("IRS") changed the filing date from April 15, 2011,[48] to April 18, 2011, due to "Emancipation Day,"[49] which is a legal holiday in the District of Columbia.[50] I.R.C. § 7503[51] provides as follows, to-wit:

> When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or *a legal holiday*, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; the term *"legal holiday" means a legal holiday in the District of Columbia*; and in the case of any return, statement, or other document required to be filed, or any other act required under authority of the internal revenue laws to be performed, at any office of the Secretary or at any other office of the United States or any agency thereof, located outside the District of Columbia but within an internal revenue district, the term "legal holiday" also means a Statewide legal holiday in the State where such office is located. (Emphasis added.)

Internal Revenue Bulletin 2011-10 explains the effect of "Emancipation Day" on filing and payment deadlines, in pertinent parts,[52] as follows, to-wit:

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[47] *See* Note 25, *supra*.

[48] 26 U.S.C.A. § 6072(a).

[49] *See* Note 7, *supra*. The Administrative Law Judge is taking judicial notice of the website at http://www.timeanddate.com to complete the factual details of this matter:

> Formal slavery was legal until 1865 in most of the area that is now the United States. Many slaves were of African origin and many slave owners were of European descent, although some other groups also had slaves. By 1860, there were about four million slaves in the United States. On April 16, 1862, Abraham Lincoln, who was the US president at the time, signed the Compensated Emancipation Act, which freed more than 3000 slaves in the District of Columbia. However, slavery did not officially end in the rest of the United States until after the American Civil War, which lasted from 1861 until 1865.

[50] 26 U.S.C.A. § 7503.

[51] *Id.*

> For taxpayers nationwide, when *Emancipation Day, April 16, falls on a*:
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> - *Saturday*: Friday, April 15 is the observed date and the filing deadline for all tax forms and payments required to be filed or completed on or before April 15, is *Monday, April 18*.
> - *Sunday*: Monday, April 17 is the observed date and the filing deadline for all tax forms and payments required to be filed or completed on or before April 15, is *Tuesday, April 18*.
> - *Monday*: Monday, April 16 is the holiday and the filing deadline for all forms and payments required to be filed or completed on or before April 15, is *Tuesday, April 17*.
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> For example, in 2011, Emancipation Day falls on a Saturday, meaning that it will be observed on Friday, April 15, 2011. *The filing deadline for all tax forms and payments required to be filed or completed on or before April 15 (as described in Section 6072(a), including the Form 1040 series of returns) will be Monday, April 18, 2011*. The IRS will widely publicize the rule in this notice in affected years to remind the public that the filing deadline is extended.[53] (Emphasis added.)

This provision of the Internal Revenue Code has the effect of extending the time for filing Oklahoma individual paper income tax returns for tax year 2010 from April 15, 2011 to April 18, 2011. The protestant's three year limitations period for filing a claim for refund for his 2007 taxes is not affected by the date that his 2010 tax return is due. It is determined by adding three years to the date that his 2007 tax return was due.

Section 2368(G) established the original due date of the 2007 return. In 2008 Emancipation Day fell on a Wednesday and did not affect when Protestant's 2007 taxes were due. Protestant's 2007 taxes were due on April 15, 2008. Three years from that date is April 15, 2011. Protestant had until April 15, 2011 to make a claim for refund for his 2007 taxes.

ORDER

The Oklahoma Tax Commission orders that Protestant's Claim for Refund 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.

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[52] *See* IRS website at http://www.irs.gov/irb/2011-10_IRB/ar09.html. *See also* Note 7, *supra*.

[53] For 2012, Emancipation Day fell on Monday, April 16th so the filing deadline was extended to Tuesday, April 17, 2012.

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."