

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2013-01-15-05 / NON-PRECEDENTIAL  
**ID:** P-11-609-H  
**DATE:** JANUARY 15, 2013  
**DISPOSITION:** SUSTAINED IN PART, DENIED IN PART  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT (“Protestant”) appears pro se.<sup>1</sup> The Account Maintenance Division (“Division”) of the Oklahoma Tax Commission, appears by OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

### PROCEDURAL HISTORY

On November 14, 2011, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*<sup>2</sup> and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.<sup>3</sup> On November 21, 2011, OTC ATTORNEY filed an Entry of Appearance as Counsel for the Division, along with copies of the introductory letter to CPA, CPA and spreadsheet titled “Summary of Unfiled and Unpaid Income Taxes Using Changed Tax Data from the Amended Tax Returns.”

On December 8, 2011, the Court Clerk<sup>4</sup> (“Clerk”) mailed a letter advising the parties that this case had been assigned to Jay L. Harrington, Administrative Law Judge and docketed as Case Number P-11-609-H. The letter also advised the parties 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*.<sup>5</sup> On December 19, 2011, the Clerk mailed the Notice of Prehearing Conference to CPA stating the prehearing conference was set for January 10, 2012, at 9:30 a.m.<sup>6</sup>

On January 4, 2012, the Division filed a letter from CPA to OTC ATTORNEY with the Clerk, which discussed factual circumstances concerning this matter and requesting withdrawal as the Protestant’s representative. On January 10, 2012, at 9:30 a.m. the prehearing conference was held as scheduled. OTC ATTORNEY appeared via telephone. Neither the Protestant, nor

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<sup>1</sup> “[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 (9<sup>th</sup> ed. 2009).

<sup>2</sup> OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2001).

<sup>3</sup> OKLA. ADMIN. CODE § 710:1-5-20 through 710:1-5-47.

<sup>4</sup> OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

<sup>5</sup> See Note 3, *supra*.

<sup>6</sup> OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012). The Clerk mailed the notice to CPA at CPA ADDRESS.

CPA appeared or contacted the Clerk. On January 25, 2012, a letter was mailed to the parties advising that CPA request to withdraw as the Protestant's representative was awaiting ruling, upon the filing of a letter by the Protestant that CPA was no longer her representative and whether the Protestant intended to retain other representation or proceed pro se. The parties were directed to file a status report on or before February 9, 2012.

On February 9, 2012, the Division filed the Status Report advising that it attempted to contact the Protestant by telephone and e-mail, but had not received a response. The Division requested a teleconference to give the Protestant an opportunity to advise how she wished to proceed. On February 13, 2012, the Clerk mailed the Notice of Teleconference to the Protestant's last-known address,<sup>7</sup> advising that a teleconference had been set for February 27, 2012, at 10:30 a.m. The Clerk copied the letter to CPA. On February 27, 2012, at 10:30 a.m. the teleconference was held as scheduled. Only OTC ATTORNEY appeared by telephone. On February 27, 2012, the Division filed a Status Report advising that CPA received an e-mail from the Protestant advising that she was aware that CPA had withdrawn as her representative and that she would review the information forwarded to her by CPA. The Protestant did not file any responses. On February 27, 2012, the undersigned granted CPA'S request and the Clerk mailed to the parties the Order Granting Request to Withdraw as Representative.

On March 20, 2012, the Clerk mailed a letter to the parties setting this matter for hearing on April 24, 2012, at 9:30 a.m., with position letters and/or memorandum briefs due on or before April 12, 2012.<sup>8</sup>

On April 17, 2012, the Division filed its Memorandum Brief with Exhibits 1 through 38, attached thereto. The Protestant did not file a position letter and/or memorandum brief. On April 24, 2012, at 9:30 a.m. the undersigned convened the hearing. The undersigned noted for the record that the Protestant did not appear and had not made any contact with the Clerk or OTC ATTORNEY concerning the hearing. The Division called one (1) witness, AUDITOR, Auditor III ("Auditor"), Account Maintenance Division of the Oklahoma Tax Commission, who testified concerning the history of the Protestant's income tax accounts for the 1999 through 2010 Tax Years and as custodian of the Division's records. The Division's Exhibits 1 through 59 were identified, offered, and admitted into evidence. At the conclusion of the hearing, the undersigned closed the record and this case submitted for decision on April 24, 2012.

On June 12, 2012, at 2:00 p.m. the undersigned held a teleconference with OTC ATTORNEY advising that this matter was being withdrawn from decision because the record lacked sufficient facts to issue proposed *Findings, Conclusions and Recommendations*. On June 13, 2012, the undersigned advised the parties by letter of the matters discussed during the June 12<sup>th</sup> teleconference and directed the Division to supplement the record, as more fully set forth therein.

On July 13, 2012, the Division filed an Interim Status Report that it had not completed preparation of additional evidence to supplement the record. On July 16, 2012, the Clerk mailed

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<sup>7</sup> *Id.* The Clerk mailed the notice to the Protestant at LAST KNOWN ADDRESS.

<sup>8</sup> *Id.*

a letter to parties advising of an extension to July 27, 2012. On July 27, 2012, the Clerk received a phone call from the Protestant advising that she had located a CPA to help her submit additional documentation. OTC ATTORNEY did not have any objection. The undersigned granted the Protestant thirty (30) days to submit additional documentation. On July 30, 2012, the Clerk mailed a letter to the parties that the Protestant had until August 31, 2012, to submit additional information.

On August 29, 2012, OTC ATTORNEY phoned the Clerk and advised that the parties had been in discussions and that the Division requested thirty (30) days to finalize the "Accounting" requested by the undersigned.<sup>9</sup>

On September 4, 2012, the Clerk mailed a letter to the parties granting the Protestant an extension until October 1, 2012, to submit additional information.

On October 3, 2012, the Division filed an Interim Status Report advising that the "Accounting" requested needed significant revisions. On October 3, 2012, the Clerk mailed a letter to the parties granting the extension until October 8, 2012. On October 8, 2012, the Division filed the Affidavit of AFFIANT with a summary sheet and two (2) spreadsheets attached thereto, identified and admitted into evidence as ALJ's Exhibits 1 through 3, respectively. The Protestant did not file any information with the Clerk. On October 26, 2012, the Division filed the "Corrected" Affidavit of AFFIANT, along with computer screen prints of the Protestant's income tax records for the 2002 through 2010 Tax Years and pertinent Comment Screens, attached thereto, and identified and admitted into evidence as ALJ's Exhibits 4 and 5, respectively. The undersigned notified the parties by letter that the record closed and this matter submitted for decision on October 29, 2012.

### FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the Division's Memorandum Brief, the undersigned finds:

1. On April 30, 2003, the Compliance Division mailed a proposed income tax assessment ("Non-File") against the Protestant for the 1999 Tax Year,<sup>10</sup> as follows, to-wit:

Tax Due	\$3,239.00
Interest @ 15% from 04/15/00 to 05/30/03	1,517.44
TAX AND PENALTY IF PAID WITHIN 30 DAYS	4,756.44
30 Day Delinquency Penalty @ 10%	<u>323.90</u>
TAX, INTEREST & PENALTY DUE AFTER 30 DAYS	\$5,080.34

<sup>9</sup> On August 31, 2012, OTC ATTORNEY filed an Interim Status Report confirming the request, along with a copy of an e-mail from the Protestant.

<sup>10</sup> Testimony of Auditor. Division's Exhibit 1.

On December 10, 2003, the Compliance Division mailed a proposed income tax assessment (“Non-File”) against the Protestant for the 2000 Tax Year,<sup>11</sup> as follows, to-wit:

Tax Due	\$5,574.00
Interest @15% from 04/15/01 to 01/09/04	2,288.39
TAX AND PENALTY IF PAID WITHIN 30 DAYS	7,862.39
30 Day Delinquency Penalty @ 10%	<u>557.40</u>
TAX, INTEREST & PENALTY DUE AFTER 30 DAYS	\$8,419.79

2. On December 29, 2004, the Compliance Division mailed a proposed income tax assessment (“Non-File”) against the Protestant for the 2002 Tax Year,<sup>12</sup> as follows, to-wit:

Tax Due	\$6,499.00
Interest @15% from 04/15/01 to 01/09/04	1,602.49
TAX AND PENALTY IF PAID WITHIN 30 DAYS	8,101.49
30 Day Delinquency Penalty @ 10%	<u>649.90</u>
TAX, INTEREST & PENALTY DUE AFTER 30 DAYS	\$8,751.39

3. On October 3, 2005, the Compliance Division mailed a proposed income tax assessment (“Non-File”) against the Protestant for the 2003 Tax Year,<sup>13</sup> as follows, to-wit:

Tax Due	\$5,454.00
Interest @15% from 04/15/04 to 12/02/05	1,335.86
TAX AND PENALTY IF PAID WITHIN 30 DAYS	6,789.86
30 Day Delinquency Penalty @ 10%	<u>545.40</u>
TAX, INTEREST & PENALTY DUE AFTER 30 DAYS	\$7,335.26

4. On May 5, 2007, the Compliance Division mailed a proposed income tax assessment (“Non-File”) against the Protestant for the 2004 Tax Year,<sup>14</sup> as follows, to-wit:

Tax Due	\$4,938.00
Interest @15% from 04/15/05 to 07/24/07	1,684.33
TAX AND PENALTY IF PAID WITHIN 30 DAYS	6,622.33
30 Day Delinquency Penalty @ 10%	<u>493.80</u>
TAX, INTEREST & PENALTY DUE AFTER 30 DAYS	\$7,116.13

5. On October 14, 2009, the Compliance Division mailed a proposed income tax assessment (“Non-File”) against the Protestant for the 2005 Tax Year,<sup>15</sup> as follows, to-wit:

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<sup>11</sup> *Id.* Division’s Exhibit 2.

<sup>12</sup> *Id.* Division’s Exhibit 3.

<sup>13</sup> *Id.* Division’s Exhibit 4.

<sup>14</sup> *Id.* Division’s Exhibit 5.

<sup>15</sup> *Id.* Division’s Exhibit 6.

Tax Due	\$ 8,468.71
Interest @ 15% from 04/15/06 to 07/24/07	4,653.16
TAX AND PENALTY IF PAID WITHIN 60 DAYS	13,121.87
30 Day Delinquency Penalty @ 10%	<u>846.87</u>
TAX, INTEREST & PENALTY DUE AFTER 60 DAYS	\$13,968.74

6. On October 14, 2009, the Compliance Division mailed a proposed income tax assessment (“Non-File”) against the Protestant for the 2006 Tax Year,<sup>16</sup> as follows, to-wit:

Tax Due	\$9,097.25
Interest @ 15% from 04/15/07 to 12/13/09	3,626.45
TAX AND PENALTY IF PAID WITHIN 60 DAYS	12,723.70
30 Day Delinquency Penalty @ 10%	<u>909.73</u>
TAX, INTEREST & PENALTY DUE AFTER 60 DAYS	\$13,633.43

7. The Division mailed the proposed “Non-File” income tax assessments for the 1999, 2000, and 2002 through 2006 Tax Years to the Protestant’s last-known address according to the records of the Tax Commission at LAST KNOWN ADDRESS. The Protestant did not file a protest to any of the proposed income tax assessments.<sup>17</sup>

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<sup>16</sup> *Id.* Division’s Exhibit 7.

<sup>17</sup> *Id.* See Note 6, *supra*. See also Notes 10-15, *supra*.

From March 31, 2005 through August 7, 2008, the Protestant made payments on the Non-File Assessments totaling \$42,494.84, pursuant to a pay plan entered into with the Tax Commission, through OSI Collection Services, Inc.,<sup>18</sup> as follows, to-wit:

FILE DATES	1999	2000	2002	2003	2004	2005	2006	
ORIGINAL <sup>19</sup>	04/26/11	04/26/11	03/14/11	03/14/11	03/14/11	03/14/11	03/14/11	
AMENDED <sup>20</sup>			03/29/11	03/29/11	03/29/11	03/29/11	03/29/11	
NON-FILE ASI	1999ASI	2000ASI	2002ASI	2003ASI	2004ASI	2005ASI	2006ASI	TOTAL
TOTAL <sup>21</sup>	5,667.93	9,996.96	10,166.74	8,138.22	7,315.42	15,421.56	15,680.13	72,386.96
PAYMENT DATE	AMOUNT							
03/31/05	2,000.00							2,000.00
04/30/05	1,000.00							1,000.00
05/31/05	239.00	761.00						1,000.00
06/30/05		1,000.00						1,000.00
08/08/05		1,000.00						1,000.00
10/5/05		2,813.00	187.00					3,000.00
11/28/05			1,000.00					1,000.00
01/16/06			1,000.00					1,000.00
01/31/06			1,000.00					1,000.00
03/31/06			1,000.00					1,000.00
04/05/06			1,000.00					1,000.00
04/29/06			1,000.00					1,000.00
05/31/06			312.00	688.00				1,000.00
06/30/06				1,000.00				1,000.00
07/31/06				1,000.00				1,000.00
08/31/06				1,000.00				1,000.00
09/30/06				1,000.00				1,000.00
10/31/06	234.00			786.00				1,000.00
11/30/06	1,000.00							1,000.00
12/30/06	1,000.00							1,000.00
01/31/07	194.93	805.07						1,000.00
02/28/07		1,000.00						1,000.00
03/31/07		1,000.00						1,000.00
04/30/07		1,000.00						1,000.00
05/31/07		617.89	396.15					1,000.00
06/29/07			1,000.00					1,000.00
07/31/07			1,000.00					1,000.00
08/31/07					1,000.00			1,000.00
09/29/07					1,000.00			1,000.00
10/31/07					1,000.00			1,000.00
11/30/07					1,000.00			1,000.00
01/02/08			62.00		938.00			1,000.00
02/01/08			1,000.00					1,000.00
02/29/08			209.50	790.41				1,000.00
03/31/08				1,000.00				1,000.00
04/30/08				893.81	106.19			1,000.00
05/31/08					1,000.00			1,000.00
07/06/08					1,000.00			1,000.00
08/07/08					271.23	1,209.57		1,480.80
TOTAL PAYMENTS	5,667.93	9,996.96	10,166.74	8,138.22	7,315.42	1,209.57	0.00	42,494.84
TOTAL AFTER PAYMENTS	0.00	0.00	0.00	0.00	0.00	14,211.89	16,680.13	29,892.12

<sup>18</sup> *Id.* Division's Exhibit 8.

<sup>19</sup> See Notes 22 through 29, *infra*. See also Note 46, *infra*.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* This amount is from the Division's spreadsheet and is a combination of tax, penalty, interest, and tax warrant fees, if applicable.

8. On April 26, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 1999 Tax Year, which reflects a refund of \$3,639.00.<sup>22</sup>

9. On April 26, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 2000 Tax Year, which reflects a refund of \$321.00.<sup>23</sup>

10. On March 14, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 2001 Tax Year, which reflects a refund of \$2,664.00. The Protestant requested the refund credited to estimated tax for the 2002 Tax Year.<sup>24</sup>

11. On March 14, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 2002 Tax Year, which reflects a refund of \$2,416.00. The Protestant requested the refund credited to estimated tax for the 2003 Tax Year.<sup>25</sup>

12. On March 14, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 2003 Tax Year, which reflects a refund of \$2,112.00.<sup>26</sup>

13. On March 14, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 2004 Tax Year, which reflects a refund of \$2,040.00. The Protestant requested the refund credited to estimated tax for the 2005 Tax Year.<sup>27</sup>

14. On March 14, 2011, the Protestant filed an original Oklahoma Resident Income Tax Return for the 2005 Tax Year, which reflects an income tax due of \$37.00 (not remitted).<sup>28</sup>

15. On March 14, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 2006 Tax Year, which reflects a refund of \$4,183.00. The Protestant requested the refund credited to estimated tax for the 2007 Tax Year.<sup>29</sup>

16. On March 14, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 2007 Tax Year, which reflects a refund of \$15,190.00. The Protestant requested the refund credited to estimated tax for the 2008 Tax Year.<sup>30</sup>

17. On March 14, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 2008 Tax Year, which reflects a refund of \$22,190.00.<sup>31</sup>

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<sup>22</sup> *Id.* Division's Exhibit 9.

<sup>23</sup> *Id.* Division's Exhibit 10.

<sup>24</sup> *Id.* Division's Exhibit 11.

<sup>25</sup> *Id.* Division's Exhibit 12.

<sup>26</sup> *Id.* Division's Exhibit 13.

<sup>27</sup> *Id.* Division's Exhibit 14.

<sup>28</sup> *Id.* Division's Exhibit 15.

<sup>29</sup> *Id.* Division's Exhibit 16.

<sup>30</sup> *Id.* Division's Exhibit 17.

<sup>31</sup> *Id.* Division's Exhibit 18.

18. On March 14, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 2009 Tax Year, which reflects a refund of \$21,783.00.<sup>32</sup>

19. On March 14, 2011, the Protestant filed an original Oklahoma Resident Income Return for the 2010 Tax Year, which reflects a refund of \$19,129.00. The Protestant requested \$6,000.00 credited to estimated tax for the 2011 Tax Year.<sup>33</sup>

20. On June 10, 2011, the Division mailed a letter to the Protestant denying the refund for the 1999 Tax Year,<sup>34</sup> in pertinent part, as follows, to-wit:

YOUR 1999 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).

21. On May 27, 2011, the Division mailed a letter to the Protestant denying the refund for the 2000 Tax Year,<sup>35</sup> in pertinent part, as follows, to-wit:

YOUR 2000 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).

22. On April 13, 2011, the Division mailed a letter to the Protestant denying the refund for the 2001 Tax Year,<sup>36</sup> in pertinent part, as follows, to-wit:

YOUR 2001 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).

23. On April 13, 2011, the Division mailed an adjustment letter to the Protestant for the 2002 Tax Year,<sup>37</sup> as follows, to-wit:

<u>FORM 511</u>		<u>REPORTED</u>	<u>ADJUSTED</u>
LINE 25	OKLA. ESTIMATED TAX PAYMENT	2,664.00	0.00
LINE 31	TOTAL REFUNDABLE CREDITS	2,664.00	0.00
LINE 32	OVERPAYMENT OF INCOME TAX	2,416.00	0.00
LINE 33	AMT. OF REFUND TO EST. TAX	2,416.00	0.00

<sup>32</sup> *Id.* Division's Exhibit 19.

<sup>33</sup> *Id.* Division's Exhibit 20.

<sup>34</sup> *Id.* Division's Exhibit 21.

<sup>35</sup> *Id.* Division's Exhibit 22.

<sup>36</sup> *Id.* Division's Exhibit 23.

<sup>37</sup> *Id.* Division's Exhibit 24.

LINE 37	INCOME TAX DUE	0.00	248.00
LINE 41	TOTAL BALANCE DUE	0.00	248.00
	BALANCE DUE AFTER ADJUSTMENTS		248.00

24. On April 13, 2011, the Division mailed an adjustment letter to the Protestant for the 2003 Tax Year,<sup>38</sup> as follows, to-wit:

<u>FORM 511</u>		<u>REPORTED</u>	<u>ADJUSTED</u>
LINE 27	OKLA. ESTIMATED TAX PAYMENT	2,416.00	0.00
LINE 33	TOTAL REFUNDABLE CREDITS	2,416.00	0.00
LINE 34	OVERPAYMENT OF INCOME TAX	2,112.00	0.00
LINE 35	AMT. OF REFUND TO EST. TAX	2,112.00	0.00
LINE 39	INCOME TAX DUE	0.00	304.00
LINE 43	TOTAL BALANCE DUE	0.00	304.00
	BALANCE DUE AFTER ADJUSTMENTS		304.00

25. On April 13, 2011, the Division mailed an adjustment letter to the Protestant for the 2004 Tax Year,<sup>39</sup> as follows, to-wit:

<u>FORM 511</u>		<u>REPORTED</u>	<u>ADJUSTED</u>
LINE 27	OKLA. ESTIMATED TAX PAYMENT	2,112.00	0.00
LINE 33	TOTAL REFUNDABLE CREDITS	2,112.00	0.00
LINE 34	OVERPAYMENT OF INCOME TAX	2,040.00	0.00
LINE 35	AMT. OF REFUND TO EST. TAX	2,040.00	0.00
LINE 39	INCOME TAX DUE	0.00	72.00
LINE 43	TOTAL BALANCE DUE	0.00	72.00

26. On April 13, 2011, the Division mailed an adjustment letter to the Protestant for the 2005 Tax Year,<sup>40</sup> as follows, to-wit:

<u>FORM 511</u>		<u>REPORTED</u>	<u>ADJUSTED</u>
LINE 28	OKLA. ESTIMATED TAX PAYMENT	2,040.00	0.00
LINE 29	PAYMENTS WITH EXTENSION	2,112.00	0.00
LINE 34	TOTAL REFUNDABLE CREDITS	2,040.00	0.00
LINE 40	INCOME TAX DUE	37.00	2,276.00
LINE 44	TOTAL BALANCE DUE	0.00	2,313.00

27. On April 12, 2011, the Division mailed an adjustment letter to the Protestant for the 2006 Tax Year,<sup>41</sup> as follows, to-wit:

<u>FORM 511</u>		<u>REPORTED</u>	<u>ADJUSTED</u>
LINE 24	OKLA. ESTIMATED TAX PAYMENT	6,474.00	0.00
LINE 30	PAYMENTS WITH EXTENSION	6,474.00	0.00
LINE 36	INCOME TAX	0.00	2,291.00
LINE 40	INCOME TAX DUE	0.00	2,291.00

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<sup>38</sup> *Id.* Division's Exhibit 25.

<sup>39</sup> *Id.* Division's Exhibit 26.

<sup>40</sup> *Id.* Division's Exhibit 27.

<sup>41</sup> *Id.* Division's Exhibit 28.

28. On April 12, 2011, the Division mailed an adjustment letter to the Protestant for the 2007 Tax Year,<sup>42</sup> as follows, to-wit:

<u>FORM 511</u>		<u>REPORTED</u>	<u>ADJUSTED</u>
LINE 13	OKLAHOMA TAXABLE INCOME	13,860.00-	0.00
LINE 24	OKLA. ESTIMATED TAX PAYMENT	15,183.00	0.00
LINE 30	TOTAL REFUNDABLE CREDITS	15,190.00	7.00
LINE 31	OVERPAYMENT OF INCOME TAX	15,190.00	7.00
LINE 32	AMT. OF REFUND TO EST. TAX	15,190.00	7.00

29. On April 13, 2011, the Division mailed an adjustment letter to the Protestant for the 2008 Tax Year,<sup>43</sup> as follows, to-wit:

<u>FORM 511</u>		<u>REPORTED</u>	<u>ADJUSTED</u>
LINE 13	OKLAHOMA TAXABLE INCOME	12,975.00-	0.00
LINE 24	OKLA. ESTIMATED TAX PAYMENT	22,190.00	0.00
LINE 30	TOTAL REFUNDABLE CREDITS	22,190.00	0.00
LINE 31	OVERPAYMENT OF INCOME TAX	22,190.00	0.00
LINE 35	REFUND	22,190.00	0.00

30. On April 7, 2011, the Division mailed an adjustment letter to the Protestant for the 2009 Tax Year,<sup>44</sup> as follows, to-wit:

<u>FORM 511</u>		<u>REPORTED</u>	<u>ADJUSTED</u>
LINE 23	OKLA. ESTIMATED TAX PAYMENT	22,183.00	0.00
LINE 29	TOTAL REFUNDABLE CREDITS	22,183.00	0.00
LINE 30	OVERPAYMENT OF INCOME TAX	21,776.00	0.00
LINE 34	REFUND	21,176.00	0.00
LINE 35	INCOME TAX DUE	0.00	407.00
LINE 38	TOTAL BALANCE DUE	0.00	407.00
BALANCE DUE AFTER ADJUSTMENTS		0.00	407.00

31. On March 23, 2011, the Division mailed an adjustment letter to the Protestant for the 2010 Tax Year,<sup>45</sup> as follows, to-wit:

<u>FORM 511</u>		<u>REPORTED</u>	<u>ADJUSTED</u>
LINE 24	OKLA. ESTIMATED TAX PAYMENT	21,783.00	0.00
LINE 30	TOTAL REFUNDABLE CREDITS	21,783.00	0.00
LINE 31	OVERPAYMENT OF INCOME TAX	19,129.00	0.00
LINE 32	AMT. OF REFUND TO EST. TAX	6,000.00	0.00
LINE 35	REFUND	13,129.00	0.00
LINE 36	INCOME TAX DUE	0.00	2,654.00
LINE 39	TOTAL BALANCE DUE	0.00	2,654.00

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<sup>42</sup> *Id.* Division's Exhibit 29.

<sup>43</sup> *Id.* Division's Exhibit 30.

<sup>44</sup> *Id.* Division's Exhibit 31.

<sup>45</sup> *Id.* Division's Exhibit 32.

32. On March 29, 2011, the Protestant filed Amended Income Tax Returns for the 1999 through 2010 Tax Years. Based upon the Amended Income Tax Returns, the Division made further adjustments to the 2002 through 2010 Tax Years.<sup>46</sup>

33. On April 14, 2011, the Division cancelled the “Non-File” assessments for the 1999, 2000, 2002, 2003, 2004, 2005, and 2006 Tax Years.<sup>47</sup>

34. On May 4, 2011, the Division received a protest from CPA via e-mail, as more fully set forth therein.<sup>48</sup>

35. The Division’s post-hearing “Accounting” of the Protestant’s income tax accounts for the 1999 through 2010 Tax Years, reflects the following,<sup>49</sup> to-wit:

- Payments on the assessments for the **1999 (\$5,667.93)** and **2000 (\$9,996.96)** Tax Years were made more than three (3) years before being claimed as credits or refunds.
- The Division **transferred** payments from the assessment for the 2002 Tax Year to the “Original” income tax return for reported liability on the **2002** Tax Year (**\$8,911.70**). Payments (**\$1,255.04**) **which were not transferred** to the “Original” return for the 2002 Tax Year were made more than three (3) years before being claimed as credits or refunds. (\$8,911.70 plus \$1,255.04 equals **\$10,166.74**)
- The Division **transferred** payments from the assessment for the 2003 Tax Year to the “Original” income tax return for reported liability on the **2003** Tax Year (**\$7,199.41**). The Division **transferred** payments (**\$667.81**) from the assessment for the **2003** Tax Year to the “Original” return for the **2005** Tax Year. Payments (**\$271.00**) **which were not transferred** to the “Original” return for the 2003 Tax Year were made more than three (3) years before being claimed as credits or refunds. (\$7,199.41 plus \$667.81 plus \$271.00 equals **\$8,138.22**)
- The Division **transferred** payments from the assessment for the 2004 Tax Year to the “Original” income tax return for reported liability on the **2004** Tax Year (**\$3,829.84**). The Division **transferred** payments (**\$398.62**) from the assessment for the **2004** Tax Year to the “Original” return for the **2005** Tax Year, (**\$2,291.00**) to the “Original” return for the **2006** Tax Year, **\$407.00** to the “Original” return for **2009** Tax Year, and **\$388.96** to the

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<sup>46</sup> Id. Division’s Exhibits 12 through 20, 24 through 32, and 39 through 59. See ALJ’s Exhibit 2.

<sup>47</sup> Id. Division’s Exhibits 33 through 34.

<sup>48</sup> Id. Division’s Exhibit 38.

<sup>49</sup> See ALJ’s Exhibits 1 through 5. See Note 18, *supra*.

“Original” return for the **2010** Tax Year. (\$3,829.84 plus \$398.62 plus \$2,291.00 plus \$407.00 plus \$388.96 equals **\$7,315.42**)

- The Division **transferred** payments from the assessment for the 2005 Tax Year to the “Original” income tax return for reported liability on the **2005** Tax Year (**\$1,209.57**).

- **SUMMARY OF PAYMENTS**

\$ 5,667.93 (1999 AS1)

\$ 9,996.96 (2000 AS1)

\$10,166.74 (2002 AS1)

\$ 8,138.22 (2003 AS1)

\$ 7,315.42 (2004 AS1)

\$ 1,209.57 (2005 AS1)

\$42,494.84 is the total of the payments made on the Non-File Assessments by the Protestant during the pay plan with OSI.

36. According to the Division’s post-hearing “Accounting,” the Protestant has balances due on the following periods,<sup>50</sup> to-wit:

	<b><u>2005 AM1</u></b>	<b><u>2010X</u></b>	<b><u>Total</u></b>
Tax:	67.00	79.42	146.42
Interest:	809.95	17.20	827.15
Penalty:	113.80	50.00	163.80
Total:	\$990.75	\$146.62	\$1,137.37

<sup>50</sup> See ALJ’s Exhibit 3. The spreadsheet does not indicate the interest through date.

37. The Protestant made \$5,480.80 in pay plan payments on the Non-File Assessments within three (3) years of filing the Original and Amended Returns for the 2003 through 2005 Tax Years,<sup>51</sup> as follows, to-wit:

PAYMENT DATE	2003	2004	2005	TOTAL
03/31/2008	1,000.00			
04/30/2008	893.81	106.19		1,000.00
05/31/2008		1,000.00		1,000.00
07/08/2008		1,000.00		1,000.00
08/07/2008		271.23	1,209.57	1,480.80
Total	1,893.81	2,377.42	1,209.57	5,480.80

38. The Division transferred only \$5,362.96 in payments leaving \$117.84 unaccounted (\$5,480.80 minus \$5,362.96),<sup>52</sup> as follows, to-wit:

PERIOD	2003 AS1	2004 AS1	2005 AS1	TOTAL
2005	\$667.81	398.62	1,209.57	2,276.00
2006		2,291.00		2,291.00
2009		407.00		407.00
2010		388.96		388.96
	\$667.81	\$3,485.58	\$1,209.57	\$5,362.96

### CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.<sup>53</sup>

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.<sup>54</sup>

3. 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.<sup>55</sup>

4. 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.<sup>56</sup>

<sup>51</sup> See Note 18, *supra*.

<sup>52</sup> See Note 49, *supra*.

<sup>53</sup> OKLA. STAT. ANN. tit 68, § 207 (West 2001). See OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

<sup>54</sup> OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002). See *Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

<sup>55</sup> OKLA. STAT. ANN. tit 68, § 2385.10 (West 2001).

<sup>56</sup> 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....

5. All returns, except corporate returns, based on the calendar year shall be made on or before the 15th day of April following the close of the taxable year.<sup>57</sup>

6. 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.<sup>58</sup>

7. When an original return has not been filed, the Commission will not issue a refund on an original Individual Income Tax Return filed three (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.<sup>59</sup>

8. 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.

9. General principles of equity may not override statutory requirements for timely filing of tax refund claims.<sup>60</sup> 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.<sup>61</sup>

10. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.<sup>62</sup> A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.<sup>63</sup>

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*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]

<sup>57</sup> OKLA. STAT. ANN. tit. 68, § 2368(G) (West 2012).

<sup>58</sup> *See* Note 19, *supra*. *See also* OKLA. STAT. ANN. tit. 68, § 216 (West 2001).

<sup>59</sup> OKLA. ADMIN. CODE § 710:50-9-2. Exceptions not pertinent to this matter are set out in OTC Rule 710:50-5-13. *See* OKLA. STAT. ANN. tit. 68, § 2373 (West 2001).

<sup>60</sup> OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). *See Republic Petroleum Corp. v. United States*, 613 F.2d 518.

<sup>61</sup> OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). *See Jones v. Liberty Glass Co.*, 332 U.S. 524.

<sup>62</sup> 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

**DISCUSSION**

On April 26, 2011, the Protestant filed the Original Returns for the 1999 and 2000 Tax Year.<sup>64</sup> On March 14, 2011, the Protestant filed the Original Returns for the 2002, 2003, 2004, and 2005 Tax Years.<sup>65</sup> All of the Protestant's Original Returns for these six (6) tax years were filed more than three (3) years after the original due of the returns barring the refunds claimed on the returns by statute.<sup>66</sup> A refund that is "barred by statute" cannot be used as payment on any delinquent account or applied to estimated tax.<sup>67</sup>

The Protestant's pay plan payments on the Non-File Assessments totaling \$42,494.84 began on March 31, 2005, and ended August 7, 2008.<sup>68</sup> Pursuant to Section 2373 of Title 68,<sup>69</sup> "...Except as provided in subsection H of Section 2375 of this title, 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." Based upon the April 26, 2011, file date for the Original Returns for the 1999 and 2000 Tax Years, all pay plan payments are outside the three (3) year period.<sup>70</sup> Based upon the March 14, 2011, and March 29, 2011, file dates for the Original Returns and Amended Returns, respectively, for the 2002, 2003, and 2004, the payments made October 5, 2005, through February 29, 2008, are outside the three (3) year period.<sup>71</sup> The pay plan payments made outside the three (3) year period total \$37,014.04.<sup>72</sup> The pay plan payments made within the three (3) year period for the 2003, 2004, and 2005 Tax Years total \$5,480.80.<sup>73</sup>

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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.

<sup>63</sup> See *Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

<sup>64</sup> See Notes 22 through 23, *supra*.

<sup>65</sup> See Notes 25 through 28, *supra*.

<sup>66</sup> *Id.* See Notes 55 through 58, *supra*.

<sup>67</sup> See Note 59, *supra*.

<sup>68</sup> See Note 18, *supra*.

<sup>69</sup> See Note 56, *supra*.

<sup>70</sup> *Id.* See Note 18, *supra*. The payments for the 1999 Tax Year total \$5,667.93. The payments for the 2000 Tax Year total \$9,996.96. The total payments time barred total \$15,664.89.

<sup>71</sup> *Id.* The payments time barred total \$21,349.15.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* See Note 49, *supra*.

As noted in Fact No. 40, the Division transferred \$5,362.96 to other Tax Years, leaving \$117.84 unaccounted.<sup>74</sup> According to paragraph six (6) of the Affidavit of AFFIANT filed October 6, 2012, the Division transferred \$4,938.00 from the 2004 “Non-File” Assessment to the Original Return for the 2004 Tax Year. The Division also transferred \$398.62 to the 2005 Original Return, \$2,291.00 to the 2006 Original Return, \$407.00 to the 2009 Original Return, and \$388.96 to the 2010 Original Return. The total of these transfers equals \$8,423.58, which is \$1,108.16 more than the pay plan payments (\$7,315.42) made by the Protestant on the 2004 Non-File Assessment, which AFFIANT says was in error.<sup>75</sup> However, a comparison of Division’s Exhibit 8 and the Division’s “Accounting” reveals the following discrepancies:

<b>DIVISION’S EXHIBIT 8</b>				
PAYMENT DATE	2003 AS1	2004 AS1	2005 AS1	TOTAL
03/31/2008	1,000.00			1,000.00
04/30/2008	893.81	106.19		1,000.00
05/31/2008		1,000.00		1,000.00
07/08/2008		1,000.00		1,000.00
08/07/2008		271.23	1,209.57	1,480.80
Total	\$1,893.81	\$2,377.42	\$1,209.57	\$5,480.80

<b>DIVISION’S ACCOUNTING</b>				
PERIOD	2003 AS1	2004 AS1	2005 AS1	TOTAL
2005	667.81	398.62	1,209.57	2,276.00
2006		2,291.00		2,291.00
2009		407.00		407.00
2010		388.96		388.96
	\$667.81	\$3,485.58	\$1,209.57	\$5,362.96

According to the Division’s “Accounting” \$3,485.58 was transferred from the 2004 Non-File Assessment to the Original Returns for the 2005, 2006, 2009, and 2010 Tax Years, but Division’s Exhibit 8 indicates that only \$2,377.42 in pay plan payments were applied to the 2004 Non-File Assessment, which is a difference of \$1,108.16. AFFIANT indicates in her Affidavit, that this transfer was in error. However, Division’s Exhibit 8 reflects that the Protestant made \$1,893.81 in pay plan payments within the three (3) year period for the 2003 Tax Year, not just the \$667.81 that AFFIANT indicates the Division transferred from the 2003 Non-File Assessment to the Original Return for the 2005 Tax Year. When the overage of \$1,108.16 is added to the \$667.81 the total is \$1,775.97 or \$117.84 less than the \$1,893.81 in pay plan payments made on the Non-File Assessment for the 2003 Tax Year within the three (3) year period on Division’s Exhibit 8. It appears that the Division has failed to credit the Protestant \$1,226.00 (\$1,108.16 plus \$117.84) for payments made on the Non-File Assessment for the 2003 Tax Year within the three (3) year period.

<sup>74</sup> See Note 49, *supra*.

<sup>75</sup> See ALJ’s Exhibit 1.

The protest states in pertinent parts as follows,<sup>76</sup> to-wit:

...I am helping [Protestant] because of a long-time relationship and because when her husband died in YEAR I told her to always come to me if she needed help. While it would have been a lot better if she had said something in YEAR, [Protestant] finally did say something when the OTC informed her that her real estate license was about to be revoked. ...

As I stated to you, my goal with the OTC is to obtain a repayment to [Protestant] of a much more equitable portion of the \$42,495. To that end, I have prepared the attached spreadsheet showing a reasonable calculation of such a repayment. I believe the calculation will speak for itself. The spreadsheet calculates a repayment to [Protestant], after paying all tax, penalty and interest of \$30,773 I am attempting to treat the \$42,495 as a separate matter and am not asking at this time for a refund of the overpaid withholdings for 1999, 2000, and 2001. [Protestant's] past refusal to face even routine financial issues has left her with substantial monies due to the IRS and to many creditors. The \$30,773 would at least give her a shot at moving forward.

Unfortunately, "General principles of equity may not override statutory requirements for timely filing of tax refund claims."<sup>77</sup> 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.<sup>78</sup>

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<sup>76</sup> See Note 49, *supra*.

<sup>77</sup> See Note 60, *supra*.

<sup>78</sup> See Note 61, *supra*.

**DISPOSITION**

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the protest should be granted in part and denied in part as set forth herein.

## 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.”