

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2013-03-12-05 / NON-PRECEDENTIAL
ID: P-11-520-H
DATE: MARCH 12, 2013
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND AND WIFE (“Protestants”) appear through CPA, CPA. The Account Maintenance Division (“Division”) of the Oklahoma Tax Commission appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On August 17, 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 August 18, 2011, the Court Clerk³ (“Clerk”) mailed the letter to CPA advising that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-11-520-H. The letter also advised that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.⁴

On September 2, 2011, OTC ATTORNEY 2, Assistant General Counsel filed an Entry of Appearance as Counsel for the Division. On September 8, 2011, the Clerk mailed the Notice of Prehearing Conference to the last-known address of CPA, setting the prehearing conference for October 5, 2011, at 10:30 a.m.⁵

On October 5, 2011, at 10:30 a.m. the undersigned conducted the prehearing conference as scheduled. CPA and OTC ATTORNEY 2 appeared via telephone. On October 12, 2011, the Clerk mailed the letter confirming the parties’ agreement to submit this matter on stipulations and briefs. The parties were to submit a proposed scheduling order on or before November 4, 2011. On October 28, 2011, CPA filed his position letter. The Procedural History omits November 5, 2011 to December 27, 2011.

On December 28, 2011, the undersigned notified the parties by letter this matter was being held in abeyance pending a decision in another case [P-11-464-H] with the same issue.

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 OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

⁴ *Id.*

⁵ OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012). The Clerk mailed the Notice to CPA at LAST KNOWN ADDRESS.

On June 14, 2012, CPA filed a letter with the Clerk requesting an update on the progress of P-11-464-H. On June 15, 2012, the undersigned advised the parties by letter that P-11-464-H had been before the Commission for final order approximately five (5) weeks and this office would notify the parties once a final order had issued.

On July 30, 2012, the Division filed its Suggestion of Ripeness for Further Proceedings and Request that the Parties be Ordered to submit a Joint Proposed Scheduling Order because Commission Order No. 2012-07-24-04 (July 24, 2012) had issued in Case No. P-11-464-H.

On August 1, 2012, the Clerk mailed the letter directing the parties to submit a proposed scheduling order on or before August 31, 2012. On August 9, 2012, OTC ATTORNEY 1 filed a Notice of Substitution of Attorney and Entry of Appearance as Counsel for the Division. On August 24, 2012, OTC ATTORNEY 1 filed a Status Report advising that CPA was on vacation and unavailable until September 4, 2012. On August 27, 2012, the Clerk mailed a letter to the parties to file a Joint Proposed Scheduling Order on or before September 7, 2012.

On September 5, 2012, the parties filed a Joint Proposed Scheduling Order. On September 6, 2012, the undersigned issued a Scheduling Order in accordance with the parties wishes as more fully set forth therein. On September 6, 2012, the parties filed Joint Stipulation of Facts, with Exhibits A through D attached thereto.

On December 14, 2012, the parties filed a *Joint Motion to Amend Stipulation of Facts and Issues*, as set forth on Exhibit A (Amended Joint Stipulation of Facts and Issues, with Exhibits A through E, attached thereto). On December 17, 2012, the undersigned issued an *Order Granting Joint Motion to Amend Stipulation of Facts and Issues*. On December 17, 2012, the Division filed its [Response] Brief,⁶ with Appendix A-1 attached thereto. The undersigned by letter, informed the parties the record closed and this matter submitted for decision on January 14, 2013.

STIPULATION OF FACTS

On December 17, 2012, the parties filed Amended Joint Stipulation of Facts and Issues, with Exhibits A through E, attached thereto⁷, as follows, to-wit:

PREAMBLE

NOW, THEREFORE, it is hereby stipulated for the purpose of the above-styled Protest by and between the parties hereto, through their respective representatives, that the facts contained herein shall be taken to be true for purposes of the resolution of this controversy, including appeals, if any, and for no other purpose. The parties specifically reserve the right to

⁶ OTC ATTORNEY 1 notes, "Letter from Protestants' representative to the Administrative Law Judge dated October 26, 2011 was not formally designated a position letter but per our conversation on December 13, 2012, counsel for Division was informed by Protestants' representative that it was in fact the Protestants' position letter." Division [Response] Brief at 1, Note 1.

⁷ The text of the stipulated facts is set out *in haec verba*. "*in haec verba*" (in heek v<<schwa>>r-b<<schwa>>). [Latin] In these same words; verbatim. BLACK'S LAW DICTIONARY (9th ed. 2009), available at <http://westlaw.com>.

offer such additional evidence as may from time to time be permitted by the authority having jurisdiction over this controversy. Further, the parties reserve all rights to object to any stipulation herein on any grounds, including, but not limited to, the ground of relevancy. Unless otherwise indicated, all stipulations hereinafter refer solely to the tax year period 2007. All Exhibits to the Stipulation are made a part of and incorporated into the Stipulation.

STATEMENT OF THE PARTIES' STIPULATED FACTS

1. On April 18, 2011, Protestants filed their 2007 Oklahoma Nonresident/Part-Year Income Tax Return (Form 511NR) ("2007 Return"). The 2007 Return is attached hereto as **Exhibit A**. On line 52 of the 2007 Return, Protestants claimed a refund in the amount of \$665.00. Although no date or mailroom stamp appears on the 2007 return itself, a copy of the "Income Tax Inquiry Browse Screen," which reflects that the 2007 Return was filed April 18, 2011, is attached hereto as **Exhibit B**.

2. On May 23, 2011, the Division notified the Protestants by letter that Protestants' 2007 Oklahoma Income tax refund had been barred by statute since Protestants' claim was not filed within the allocated time of three years from the date due. The denial letter is attached hereto as **Exhibit C**.

3. On July 1, 2011, the Protestants timely filed a protest to the Division's denial of their claim for refund. The Protestants argue that by virtue of filing an extension with the IRS, the time period for filing an Oklahoma income tax return and claiming a refund was extended. The protest letter is attached hereto as **Exhibit D**.

4. On October 28, 2011, Protestants' representative filed a position letter with this Court setting forth the argument that because the last day of the three year period allowed by Federal and Oklahoma law was a legal holiday, recognized as such by the IRS and the Commission, the filing of a return on the next business day should be considered a timely filing within the allowed three year period. The position letter is attached hereto as **Exhibit E**.

5. Protestants did not make any tax payments for the 2007 Tax Year after April 15, 2008 and their claim for refund did not include evidence of any payments made after April 15, 2008.

6. The only claim for refund made by Protestants for credits for withholding taxes paid for the 2007 Tax Year was the 2007 Return filed on April 18, 2011.

STATEMENT OF ISSUE

7. At issue in this matter is whether 26 U.S.C.A. § 7503 has the effect of extending the three year limitations period set forth in 68 O.S. § 2373 for filing a claim for refund for 2007 taxes when the final day of the three year limitation period is a legal holiday.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.⁸

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.⁹

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.¹⁰

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.¹¹

5. Section 2368(G)(1) and (2)¹² of Title 68 provide, in pertinent parts:

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.

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.

⁸ OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. ADMIN. CODE § 710:1-5-38(a) (June 25, 2009):

When a taxpayer in an administrative proceeding does not request an oral hearing, or the parties agree that an oral hearing is not needed, the Administrative Law Judge will base the Findings, Conclusions and Recommendations on the position letters and briefs submitted by the parties. The Administrative Law Judge will mail notice of a date certain for each party to submit a position letter or brief setting out therein the statement of facts, issues to be determined, contentions and statutory and case law relied upon to support his contentions. The Administrative Law Judge may schedule a conference between the parties if it is deemed necessary to clarify the positions of the parties.

⁹ OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002).

¹⁰ OKLA. STAT. ANN. tit 68, 2385.10 (West 2001).

¹¹ 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]

¹² OKLA. STAT. tit. 68, § 2368(G)(1) (West 2007).

6. Section 2375(A) of Title 68¹³ provides, in pertinent part:

...Provided, if the Internal Revenue Code provides for a later due date for returns of individuals,¹⁴ the Tax Commission shall accept payments made with returns filed by individuals by such date and such payments shall be considered as timely paid.

7. The Tax Commission Rule¹⁵ 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.

(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.

(c) Income Tax Returns of corporations are due on the 15th day of the third month following the close of the taxable year.

(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

¹³ OKLA. STAT. tit. 68, § 2375(A) (West 2007).

¹⁴ See 26 U.S.C.A § 7503:

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.

¹⁵ OKLA. ADMIN. CODE § 710:50-3-3 (July 1, 2008).

and interest will accrue from the 15th day of the fourth month following the close of the taxable year.

8. 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.¹⁶

9. 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.¹⁷

10. 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.¹⁸

11. 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.¹⁹

12. 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.²⁰

¹⁶ OKLA. STAT. ANN. tit. 68, § 2385.10 (West 2001).

¹⁷ 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.

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.

...

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

¹⁸ *Neer v. State ex rel. Oklahoma Tax Com'n*, 1999 OK 41, 982 P.2d 1071.

¹⁹ *Id.*

²⁰ *Id.*

13. 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.²¹

14. As the Supreme Court of Oklahoma stated in *Neer*,²² “We hold when none of the statutorily delineated exceptions apply, as none do here, § 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. 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.)

15. 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.²³

16. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.²⁴ A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.²⁵

DISCUSSION

The Protestants’ argument is “...that April 15, 2011 was a legal holiday for filing tax returns, recognized as such by the Internal Revenue Service and the Oklahoma Tax Commission, and that, because of that recognized holiday, their 2007 return filed on the next business day after April 15, 2011, was filed within the three-year statutory period.”²⁶

²¹ *Id.*

²² *Id.*

²³ *Matlock v. State ex rel. Okla. Tax Com’n*, 2001 OK CIV APP 104, 29 P.3d 614.

²⁴ OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

“preponderance of the evidence” means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

²⁵ *See Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com’n*, 1988 OK 91, 768 P.2d 359.

²⁶ Protestants’ Position Letter at 1.

The Division responds, “Section 2368(G)(1) of the Oklahoma Income Tax Act, 68 O.S. § 2351 et seq., set forth the due date for the filing of an individual income tax return. In the event that a refund is due on the return, the filing of such tax return constitutes a claim for refund. 68 O.S. § 2385.10. Payments of refunds are provided for in Section 2373 which limits the allowable filing period for making such claim to three years after the original due date of the return. *See also*, OKLA. ADMIN. CODE § 710:50-9-2. For purposes of determining the starting date of the limitation period set forth in 68 O.S. § 2373, Section 2368(G)(1) provides:

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.”²⁷

Commission Order 2012-07-24-04 (July 24, 2012) supports the Division’s position.²⁸ Both of these cases focus on the filing of the 2007 Return on April 18, 2011 and the Division’s subsequent denial of the refund for the reasons set forth herein. The Tax Commission held, “This provision of the Internal Revenue Code has the effect of extending the time for filing Oklahoma individual paper tax returns for the 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.”²⁹

The Tax Commission goes on to state, “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.”³⁰

It is the position of the undersigned that the Tax Commission addressed this factual situation in Tax Commission Order No. 2012-07-24-04 (July 24, 2012), and that the core questions of law raised by the Protestants in this matter are settled questions of law on the administrative level and by the Tax Commission.

²⁷ Division’s [Response] Brief at 2.

²⁸ The Tax Commission Order is incorporated herein by reference and available on the Tax Commission website at <http://www.taxok.gov/orders/itiorders12.html>.

²⁹ Tax Commission Order at 15.

³⁰ *Id.*

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the protest should be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.

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.”