

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2013-03-21-20 / NON-PRECEDENTIAL
ID: P-12-125-K
DATE: MARCH 21, 2013
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT appears pro se. The Account Maintenance Division of the Oklahoma Tax Commission ("Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

Protestant filed a State of Oklahoma Resident Income Tax Return for the 2007 tax year on February 17, 2012, claiming a refund of excess withholding in the amount of \$9,188.00. The Division by letter dated March 8, 2012, notified Protestant that because the claim was not filed within the allocated time of three years from the date due, the refund was barred by statute. Protestant timely protested the Division's notice.

On June 20, 2012, the Division referred the protest to the Office of the Administrative Law Judges for further proceedings pursuant to the Uniform Tax Procedure Code¹ and the Rules of Practice and Procedure before the Office of Administrative Law Judges². The case was docketed as Case No. P-12-125-K and assigned to ALJ, Administrative Law Judge.³

A pre-hearing teleconference was scheduled for July 24, 2012, by the *Prehearing Teleconference Notice* issued July 2, 2012.⁴ Pursuant to the conference, the parties were directed to file a status report. By separate status reports filed November 20, 2012, the Division requested that this matter be set for hearing, and Protestant requested that the matter be stayed pending a determination by the Internal Revenue Service regarding his 2007 federal income tax refund claim.

A hearing was scheduled for January 22, 2013, by Notice of Hearing issued November 28, 2012. The Brief of the Account Maintenance Division was filed January 15, 2013. Protestant's position statement, postmarked January 15, 2013 was filed January 16, 2013.

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

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

³ OAC 710:1-5-22(b).

⁴ OAC 710:1-5-28(a).

A closed hearing was held as scheduled.⁵ Protestant did not appear at the hearing. The Division called one witness: AUDITOR, Lead Auditor who testified with respect to the records of the Division and the reason for the Division's action. Division's Exhibits A through C were identified, offered and admitted into evidence. Protestant's letter of April 14, 2012 and attachments, and a letter dated April 11, 2012 from a DOCTOR in regard to her treatment of Protestant were marked as ALJ's Exhibit 1 and 2 and were admitted into evidence. Upon conclusion of the hearing, the record was closed and the protest was submitted for decision.⁶

FINDINGS OF FACT

Upon review of the file and records, including the recording of the hearing and the exhibits received into evidence, the undersigned finds:

1. The due date for filing a 2007 Oklahoma individual income tax return made on the basis of the calendar year was April 15, 2008. 68 O.S. Supp. 2002, § 2368(G)(1).
2. Protestant's State of Oklahoma Resident Income Tax Return for the 2007 tax year made on the basis of a calendar year was filed on February 17, 2012.⁷ Exhibit A. A refund of excess withholding in the amount of \$9,188.00 was claimed on the return. *Id.*
3. The Division by letter dated March 8, 2012, notified Protestant that because the claim was not filed within the allocated time of three years from the date due, the refund was barred by statute. Exhibit B.
4. Protestant timely protested the Division's notice. Exhibit C. The reasons the 2007 return was filed when it was filed are fully explained in ALJ's Exhibit 2. Essentially, Protestant writes that he was unable to manage his daily affairs and financial responsibilities due to alcoholism and manic-depressive disorder. ALJ's Exhibit 2.

⁵ Confidentiality of the proceedings pursuant to 68 O.S. 2011, § 205 was invoked by the Court.

⁶ OAC 710:1-5-39.

⁷ The return reflects a signature date of February 16, 2012, and a file stamped date by the Taxpayer Assistance Division of February 17, 2012. Exhibit A; Testimony of Auditor.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant's 2007 income tax refund claim is statutorily barred.

Protestant contends that in the interest of justice as outlined in the Preamble of the Oklahoma Constitution, his 2007 income tax refund claim should be granted. Protestant further argues that this case should be stayed pending the Internal Revenue Service's review of his 2007 federal income tax refund claim.

The Division contends that Protestant's 2007 income tax refund claim was filed outside the three (3) year period allowed by § 2373, and is therefore barred. The Division further contends that the Internal Revenue Service's decision with respect to Protestant's 2007 federal income tax refund claim has no bearing in this cause since the refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act; not the Internal Revenue Code, and the Oklahoma Income Tax Act does delineate any exceptions to the timely filing of a refund claim.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2011, § 207(c).
2. The refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act, in particular § 2373, which provides in pertinent part:

[T]he amount of the refund shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filing of the claim, or, if no claim was filed, then during the three (3) years immediately preceding the allowance of the refund.

3. In *Neer v. Oklahoma Tax Commission*, 1999 OK 41, 982 P.2d 1071, the Oklahoma Supreme Court considered the language of § 2373 and held at page 1073:

§ 2373 acts in a manner analogous to a statute of repose in that it acts as a substantive limitation on the right to recover any amount as a refund when the claim for refund is filed more than three years after the date on which Oklahoma income tax is paid. In other words, as applicable here, § 2373 is a legislatively crafted outer limit time boundary beyond which taxpayers' right to recover a refund no longer exists.

4. State income tax is due at the time of transmitting the return required under the Act. 68 O.S. Supp. 2002, § 2375(A). "All returns, * * *, made on the basis of the calendar year are due on or before the fifteenth day of April following the close of the taxable year." 68 O.S. Supp. 2002, § 2368(G)(1).
5. Tax year 2007 income tax returns made on the basis of a calendar year were due and the estimated and/or withheld income taxes with respect to the year were deemed paid on April 15, 2008. OAC 710:50-3-3(a). To be timely, a claim for refund for the 2007 tax year was required to be filed on or before April 15, 2011. 68 O.S. 2001, § 2373.
6. The provisions of § 2373 apply to the filing of an original return where the return is not filed within three (3) years of the original due date of the return. OAC 710:50-9-2. See, Oklahoma Tax Commission Order No. 91-06-06-04.
7. General principles of equity may not override statutory requirements for timely filing of tax refund claims. See, *Duncan Medical Services v. State ex rel. Oklahoma Tax Commission*, 1994 OK 91, 911 P.2d 247, 250, citing *Western Auto Supply Company v. Oklahoma Tax Commission*, 1958 OK 144, 328 P.2d 414, 420.
8. In all administrative proceedings the burden of proof is on Protestant to show in what respect the action or proposed action of the Oklahoma Tax Commission is incorrect. OAC 710:1-5-47. See, *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359, 362, citing *Continental Oil Co. v. Oklahoma State Bd. of Equalization*, 1976 OK 23, 570 P.2d 315, 317.
9. Protestant's 2007 income tax claim for refund is barred by the provisions of § 2373.

DISPOSITION

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