

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2013-04-02-01 / NON-PRECEDENTIAL
ID: P-12-175-K
DATE: APRIL 2, 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's Oklahoma income tax return for tax year 2008 was filed on April 21, 2012, claiming a carry forward of the overpayment to his 2009 estimated tax. The Division reviewed the return, and by letter dated June 25, 2012 notified Protestant that the refund was barred by statute. Protestant timely protested the notice by letter dated August 22, 2012.

On September 7, 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-12-175-K and assigned to ALJ, Administrative Law Judge.³

A pre-hearing teleconference was scheduled for October 9, 2012, by *Prehearing Teleconference Notice* issued September 13, 2012.⁴ Pursuant to the conference, a hearing was scheduled for December 6, 2012, by *Notice of Hearing* issued October 10, 2012.⁵

A *Motion for Summary Disposition* ("Motion") was filed by the Division on November 15, 2012.⁶ The Statement of Material Facts as to which No Genuine Controversies Exist, *Motion* were verified by affidavit and evidentiary material, labeled Exhibits A through D attached to the *Motion*.

By letter dated November 19, 2012, Protestant was notified that a response to the *Motion* could be filed on or before November 30, 2012. Pursuant to the Division's request, the

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

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

³ OAC 710:1-5-22(b).

⁴ OAC 710:1-5-28(a).

⁵ OAC 710:1-5-28(b) and 710:1-5-29.

⁶ OAC 710:1-5-38(b).

previously scheduled briefing deadline and hearing set for December 6, 2012 were stricken, the deadline for Protestant's response to the *Motion* was extended to December 7, 2012, and oral argument on the *Motion* was scheduled for December 17, 2012.

The *Combined Motion to Strike and Reply to the Motion for Summary Disposition of the Oklahoma Tax Commission on behalf of [Protestant]* ("Combined Motion and Reply") was filed with the Taxpayer Assistance Division on December 7, 2012, and received by this office on December 14, 2012. Protestant also filed a *Motion for Continuance* of the oral argument scheduled for December 17, 2012. By *Order* issued December 17, 2012 and *Errata Sheet* issued December 21, 2012, oral argument was rescheduled for January 31, 2013. The parties were also notified by letter dated December 17, 2012, that the Division's response to the *Combine Motion and Reply* was due on or before January 7, 2013, and Protestant's reply was due on or before January 17, 2013.

On January 7, 2013, the Division filed a *Response to Protestant's Motion to Strike*, a *Motion for Leave to File Response to Protestant's Reply to Division's Motion for Summary Disposition* and a *Response to Protestant's Reply to the Motion for Summary Disposition of the Oklahoma Tax Commission on Behalf of [Protestant]*. Protestant did not file a reply.

An *Order Denying Motion to Strike and Granting Proposal for Submission of Issue for Decision by Summary Disposition* was issued January 28, 2013.

On January 28, 2013, Protestant filed a *Motion for Continuance* of the oral argument scheduled on the *Motion*. Pursuant to this request and after consultation with the parties, oral argument was scheduled for February 5, 2013 by *Order on Protestant's Motion for Continuance*.

Oral argument was held as scheduled. Upon conclusion of oral argument, the record was closed and the protest was submitted for decision.⁷

FINDINGS OF FACT

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

1. No genuine issue as to the facts material to a decision exist and the issue is one of law.
2. The material facts as set forth in the *Motion*, STATEMENT OF MATERIAL FACTS AS TO WHICH NO GENUINE CONTROVERSIES EXIST⁸, are:
 1. Protestant filed his 2008 State of Oklahoma Resident Individual Income Tax Return ('2008 Return') on April 21, 2012.

⁷ OAC 710:1-5-38(b)(6).

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

2. The due date for filing an original 2008 State of Oklahoma Resident Income Tax Return was April 15, 2009.
3. The 2008 Return indicated an overpayment in the amount of \$12,964 due to Protestant at Line 31.
4. On June 25, 2012, the Division mailed notice to Protestant informing him that the refund claimed on his 2008 Return was barred by statute pursuant to 68 O.S. § 2373 and therefore denied.
5. On August 23, 2012, Protestant hand-delivered a protest to the denial of the claim for refund on the 2008 Return.

CONCLUSIONS OF LAW

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

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2011, § 207.
2. The issue presented for decision is whether Protestant's 2008 Oklahoma income tax overpayment, filed April 21, 2012 is barred by statute.
3. The refund of state income taxes is governed by the provisions of the Oklahoma Income Tax Act ("Act")⁹, in particular § 2373, which provides in pertinent part:

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

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

§ 2373 acts in a manner analogous to a statute of repose in that it acts as a substantive limitation on the right to recover any amount as a refund

⁹ 68 O.S. 2011, § 2351 et seq., as amended.

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.

5. State income tax is due at the time of transmitting the return required under the Act. 68 O.S. 2011, § 2375(A). "All returns, * * *, made on the basis of the calendar year shall be made on or before the 15th day of April following the close of the taxable year." 68 O.S. 2011, § 2368(G).
6. The provisions of § 2373 apply to the filing of an original return where the return is not filed within three (3) years of the original due date of the return. *OAC* 710:50-9-2. See, Oklahoma Tax Commission Order No. 91-06-06-04.
7. Tax year 2008 returns made on the basis of a calendar year were due and the estimated and/or withheld income taxes paid with respect thereto were deemed paid on April 15, 2009. See, *OAC* 710:50-3-3(a). To be timely, a claim for refund for the 2008 tax year was required to be filed on or before April 16, 2012.¹⁰ 68 O.S. 2011, § 2373.
8. 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; *Republic Petroleum Corp. v. United States*, 613 F.2d 518, 527 (5th Cir. 1980).
9. Protestant asserts that the procedure invoked to decide his protest denies him the right to due process of law. Protestant does not cite any legal authority in support of this proposition, but does argue that the failure to afford him a full and fair hearing is improper.

The Division contends that the disposition of a tax protest by summary proceedings is authorized by the *OAC* 710:1-5-38(b), which rule is valid and binding, and has the force of law, citing 75 O.S. 2011, § 308.2(C); *Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, ¶ 12, 755 P.2d 626, 630.

A person desiring a hearing before the Tax Commission shall file an application for such hearing, setting out therein: (1) a statement of the nature of the tax, the amount thereof in controversy, and the action of the Tax Commission complained of; (2) a clear and concise assignment of each error alleged to have been committed; (3) the argument and legal authority

¹⁰ April 15, 2012, fell on a Sunday. By operation of law, the due date of the return became the next business day. *OAC* 710:1-3-30(a).

upon which each assignment of error is made; (4) a statement of relief sought; (5) a statement of the witnesses; and (6) a verification by taxpayer. 68 O.S. 2011, § 207(c). “If, in such application, the taxpayer shall request an oral hearing, the Tax Commission shall grant such hearing and shall, by written notice, advise the taxpayer of a date, which shall not be less than ten (10) days from the date of mailing such written notice, when such taxpayer may appear before the Tax Commission and present argument and evidence, oral and written.” 68 O.S. 2011, § 207(d).

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. *OAC 710:1-5-38(b)*. 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. *OAC 710:1-5-38(b) (6)*.

The Rule recognizes that if a taxpayer has requested a hearing in its application or protest to the action of the Commission as authorized by statute, a hearing limited to oral argument shall be scheduled. *OAC 710:1-5-38(b) (5)*. Summary disposition is an allowed procedure and proper method for deciding any or all issues presented by a tax protest where there is no substantial controversy or genuine issue of the material facts and the issue or issues present questions of law. *OAC 710:1-5-38(b)*.

Rules promulgated pursuant to the Administrative Procedures Act¹¹, are presumed to be valid until declared otherwise by a court of competent jurisdiction. 75 O.S. 2011, § 306(C). They are valid and binding on the persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 2011, § 308.2(C). Further, the legislature is deemed to adopt an administrative construction of a statute when, subsequent to such construction, it amends the statute or reenacts it without overriding such construction. *Branch Trucking Co. v. Oklahoma Tax Commission*, 1990 OK 41, 801 P.2d 686.

The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless they are beyond the scope of the statute, are in conflict with the statute or are unreasonable. See, *Arkansas Louisiana Gas Co. v. Travis*, 1984 OK 33, 682 P.2d 225; *Boydston v. State*, 1954 OK 327, 277 P.2d 138. Agency rules need not be specifically authorized by statute, but must generally reflect the intent of the Legislature as expressed in the statute. *Jarboe Sales Company v. Oklahoma Alcoholic Beverage Laws Enforcement Commission*, 2003 OK CIV APP 23, 65 P.3d 289. As a general rule, it is presumed that administrative rules and regulations are fair and reasonable, and that the complaining party has the burden of proving the contrary by competent and convincing evidence. *State ex rel. Hart v. Parham*, 1966 OK 9, 412 P.2d 142.

10. Protestant’s 2008 income tax overpayment carry forward is barred by operation of law.

¹¹ 75 O.S. 2011, § 250 et seq., § 301 et seq.

DISPOSITION

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