

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2014-01-09-04 / NON-PRECEDENTIAL  
**ID:** P-13-105-K  
**DATE:** JANUARY 9, 2014  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### ORDER

Protestants, HUSBAND AND WIFE, husband and wife are represented by CPA, Certified Public Accountant, FIRM. The Compliance 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

On or after April 25, 2013, Protestants filed an amended Oklahoma Income Tax Return for the 2009 tax year, claiming the Credit for Investment in Qualified Electric Motor Vehicle Property and an income tax refund of \$4,750.00. The Division by letter dated May 24, 2013, notified Protestants that the refund was barred. Protestants timely protested the disallowance of the refund.

On July 25, 2012, the Division referred the protest to the Office of the Administrative Law Judges for further proceedings pursuant to the Uniform Tax Procedure Code<sup>1</sup> and the Rules of Practice and Procedure before the Office of Administrative Law Judges<sup>2</sup>. The case was docketed as Case No. P-13-105-K and assigned to ALJ, Administrative Law Judge.<sup>3</sup>

A pre-hearing teleconference was scheduled for September 17, 2013, by the *Prehearing Teleconference Notice* issued August 5, 2013.<sup>4</sup> Pursuant to the conference, a hearing was scheduled for November 21, 2013, by *Notice of Hearing* issued September 17, 2013. The *Brief of the Compliance Division* was filed November 14, 2013. The *Brief of the Taxpayer's Representative* was filed November 21, 2013.

A closed hearing was held as scheduled.<sup>5</sup> Upon initial inquiry of whether there were any objections to the Statement of Facts as contained in the briefs, the Division objected to statement

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<sup>1</sup> 68 O.S. 2011, § 201 et seq., as amended.

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

<sup>3</sup> OAC 710:1-5-22(b).

<sup>4</sup> OAC 710:1-5-28(a).

<sup>5</sup> Confidentiality of the proceedings was invoked. 68 O.S. 2011, § 205.

#7 in Protestants' brief on the basis that it expressed an opinion and Protestants objected to statement #3 in the Division's brief, but on further reflection withdrew the objection. A ruling on the Division's objection was taken under advisement. The Division's objection is sustained as reflected by the Findings of Fact contained herein.

AUDITOR, Tax Auditor testified on behalf of the Division with respect to the records reviewed and the reason for the denial of the refund claim. Division's Exhibits A through D were identified, offered and admitted into evidence. Closing statements were allowed, whereupon the record was closed and the protest was submitted for decision.<sup>6</sup>

### FINDINGS OF FACT

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

1. Except for returns filed electronically, the due date for filing an original 2009 Oklahoma individual income tax return made on the basis of the calendar year was April 15, 2010. 68 O.S. Supp. 2007, § 2368(G) (1). Individual returns for the 2009 tax year made on the basis of a calendar year and filed electronically were due on April 20, 2010. 68 O.S. Supp. 2007, § 2368(G) (2). The due date for individual returns for the 2009 tax year was not extended by the Internal Revenue Code.<sup>7</sup>
2. Protestants' 2009 original Oklahoma income tax return was timely filed.
3. Protestants' 2009 amended Oklahoma income tax return was filed on or after April 25, 2013. The amended return was executed by Protestants on April 25, 2013, Exhibit A; and received by the Oklahoma Tax Commission on April 29, 2013, Exhibit B.
4. On the 2009 amended return, Protestants claimed the Credit for Investment in Qualified Electric Motor Vehicle Property in the amount of \$4,750.00 and an income tax refund in the like amount. Exhibit A.
5. According to the statement of Protestants' representative, Protestants did not claim the subject credit on their original 2009 return because prior to the filing thereof the Tax Policy Division of the Oklahoma Tax Commission issued a letter

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<sup>6</sup> OAC 710:1-5-39.

<sup>7</sup> If the due date for filing an individual income tax return with the Internal Revenue Service falls on a Saturday, Sunday, or legal holiday, the return is considered timely if filed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. IRC § 6072; IRS Reg. § 301.7503-1.

ruling<sup>8</sup> opining that the electric vehicle purchased by Protestants did not qualify for the credit.

6. The opinion that the vehicle purchased by Protestants did not qualify for the credit was ultimately reversed.
7. According to Protestants' representative, the first indication that the vehicle purchased by Protestants might qualify for the credit was on March 3, 2011, the date of issuance of *Findings, Conclusions and Recommendations* ruling against the letter ruling on an electric vehicle similar to the one purchased by Protestants.
8. By letter dated May 24, 2013, the Division notified Protestants that their income tax refund claim was barred by statute. Exhibit C.
9. Protestants timely protested the Division's notice. Exhibit D.

### ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestants' income tax refund claim for the 2009 tax year is statutorily barred.

Protestants contend that the refund is not barred. In support of this contention, Protestants argue that the statute did not begin to run until it was possible for them to file a correct return acceptable by the Tax Commission. Protestants argue that this date was March 3, 2011, the date of issuance of the *Findings, Conclusions and Recommendations* ruling against the Letter Ruling on a similar vehicle. Protestants further argue that prior to this date they relied on the Letter Ruling, and acted in good faith and within the spirit of the law in not electing to claim the credit.

The Division contends that the refund claim is barred. In support of this contention, the Division would show that the return was filed on April 29, 2013<sup>9</sup>, fourteen (14) days after the deadline for filing a refund claim for the 2009 tax year. The Division further contends that equitable principles may not override the statutory requirements for timely filing a refund claim, citing Oklahoma Tax Commission Precedential Order No. 2006 03 23 07. The Division without conceding that misleading or erroneous advice was given to Protestants, argues that erroneous instructions by a Commission employee or a taxpayer's interpretation of those instructions cannot stop the government nor change the meaning of § 2373.

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<sup>8</sup> LR-09-201 (December 15, 2009).

<sup>9</sup> Whether the amended return was filed on April 25 or April 29, 2013 is immaterial as both dates are beyond the April 15<sup>th</sup> deadline.

**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 ¶ 2, 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. 2007, § 2375(A). In general, "[a]ll returns, except \* \* \* individual returns filed electronically, 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. 2007, § 2368(G)(1). "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." 68 O.S. Supp. 2007, § 2368(G)(2).
5. Tax year 2009 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, 2010. OAC 710:50-3-3(a). To be timely, a claim for refund for the 2009 tax year was required to be filed on or before April 15, 2013. 68 O.S. 2001, § 2373.
6. 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. The three year deadline for filing an income tax claim for refund “applies regardless of whether it is the tax agency’s error or the taxpayer’s error which leads to the overpayment of taxes.” Oklahoma Tax Commission Precedential Order No. 2006 03 23 07, citing *Jones v. Liberty Glass Co.*, 332 U.S. 524, 531 (1947).

7. In all administrative proceedings the burden of proof is on the taxpayer 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.

### ANALYSIS

Protestants mischaracterize the nature of the statute at issue. The Supreme Court of Oklahoma has identified § 2373 as a statute of repose rather than a statute of limitations. *Neer*, *supra* at ¶ 18. In *Neer* at ¶ 19, the Court wrote:

A statute of limitation extinguishes a remedy for an existing right by penalizing a party who sleeps on that right. *Reynolds v. Porter*, 1988 OK 88, 760 P.2d 816, 820. 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. *St. Paul Fire & Marine Ins. Co. v. Getty Oil Co.*, 1989 OK 139, 782 P.2d 915, 919; *Jaworsky v. Frolich*, 1992 OK 157, 850 P.2d 1052, 1054-1055. As we stated in *Reynolds v. Porter*, *supra*, 760 P.2d at 820:

Modern limitations and statutes of repose are similar because they both provide repose for the defendant. Yet, they are significantly different since a statute of limitation merely extinguishes the plaintiff’s remedy while a statute of repose [may] bar [] a cause of action before it arises. In practical terms, a statute of repose marks the boundary of a substantive right whereas a statute of limitation interposes itself only procedurally to bar the remedy after a substantive right has vested.

The time prescribed by a statute of repose runs from a specific \* \* \* event regardless of when the harm or damage occurs. A limitation period runs from the time the elements of a cause of action arise. (Footnotes omitted)

In essence, a statute of limitations 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. A statute of repose, in contrast, begins to run from a date certain, regardless of when a plaintiff may be able to bring a cause of action to successful conclusion.

Further, Protestants like the Neers and unlike the numerous taxpayers who timely claimed the subject credit, failed to avail themselves of the available adequate avenues to protect their ability to obtain a refund. *Neer, supra* at ¶ 28. Protestants could have sought from the Tax Commission an extension of the three year period, as allowed by the second paragraph of § 2373. Also, Protestants could have filed a protective refund claim. As the Court noted in *Neer* at ¶ 29:

Where a substantial part of the statutorily-prescribed time period on refund claims remains when a taxpayer learns of events causing, or likely to cause, a decrease in his/her tax liability, a protective refund claim should be filed during the prescribed period in order to preserve the viability of a refund claim.

### DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestants, HUSBAND AND WIFE 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.”