

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2014-02-04-05 / NON-PRECEDENTIAL
ID: P-13-135-H
DATE: FEBRUARY 4, 2014
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

ORDER

PROTESTANT (“Protestant”) appears pro se.¹ 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 September 16, 2013, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*² and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.³ On September 17, 2013, the Court Clerk⁴ (“Clerk”) mailed the introductory letter advising the parties of the case assignment to ALJ, Administrative Law Judge and docketed as Case Number P-13-135-H. The letter also advised the parties a Prehearing Teleconference Notice would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.⁵ On September 19, 2013, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division. On September 24, 2013, the Clerk mailed the Prehearing Teleconference Notice to the Protestant, which stated the prehearing teleconference was set for November 5, 2013, at 11:00 a.m.⁶

On November 5, 2013, at 10:00 a.m., the ALJ conducted the Prehearing Teleconference as scheduled. OTC ATTORNEY appeared via telephone. The Protestant appeared not. On November 6, 2013, the Clerk mailed the Prehearing Conference Order, which advised the

¹ “pro 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 (9th ed. 2009).

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

³ OKLA. ADMIN. CODE § 710:1-5-20 through 710:1-5-47.

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

⁵ See Note 3, *supra*.

⁶ OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2014). The Clerk mailed the notice to the Protestant at ADDRESS. See Division’s Exhibit E.

Division to file a verified response on or before December 4, 2013, with the Protestant's reply due on or before December 19, 2013, at which time the ALJ would close the record and submit this matter for decision.⁷

On December 2, 2013, the Division filed its Verified Response to Protest, with Exhibits A through F, attached thereto. The Verification attached to the Division's Verified Response to Protest was duly sworn under oath, on behalf of the Division, by AUDITOR, Auditor, Account Maintenance Division of the Oklahoma Tax Commission.⁸ The ALJ acknowledged receipt of the Division's Verified Response to Protest, the Protestant's failure to file a reply, closed the record, and submitted this case for decision on December 20, 2013.

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 Verified Response to Protest, the undersigned finds:

1. On May 15, 2013, the Protestant filed her State of Oklahoma Individual Income Tax Return for the 2009 Tax Year ("2009 Return").⁹ The 2009 Return reflected a refund of \$735.00.¹⁰

2. On May 21, 2013, the Division mailed a letter to the Protestant denying the refund on the 2009 Return, which states in pertinent part,¹¹ as follows, to-wit:

YOUR [2009] 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)

3. On July 8, 2013, by facsimile, the Division received a protest to the denial of the refund for the 2009 Tax Year. The Protestant states "I fail [sic] to file my 2009 taxes by mistake.

⁷ Division's Exhibit F.

⁸ See OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

⁹ Division's Exhibits A through B.

¹⁰ *Id.*

¹¹ *Id.* Division's Exhibit C. Additionally, the ALJ is taking judicial notice of the Division's practices in other income tax cases where the protestant's refund has been time-barred. OKLA. ADMIN. CODE § 710: 1-5-36 (July 11, 2013). The Division mailed the denial letter to the Protestant's last-known address, which is the address on the 2008 Return. See Note 6, *supra*.

Doing [sic] this time I was in the process of losing my home from unfair lenders and I had to file my taxes, I file [sic] my 2010 thinking I had already filed the 2009 taxes. While looking for some important paper in March of 2013, I found all of my 2009 information. It was a honest mistake due to stress with the foreclosure. But through it all I was able to save my home.”¹² The Protestant does not dispute that the 2009 Return was filed past the statutorily prescribed period contained in Section 2373 of Title 68.¹³ The Protestant did not request an oral hearing.¹⁴

CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.¹⁵
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.¹⁶
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.¹⁷
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.¹⁸

¹² Division’s Exhibit D.

¹³ See Note 18, *infra*.

¹⁴ See Note 12, *supra*. See also OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

¹⁵ *Id.* OKLA. STAT. ANN. tit 68, § 207 (West 2001).

¹⁶ 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.

¹⁷ OKLA. STAT. ANN. tit 68, § 2385.10 (West 2013).

¹⁸ OKLA. STAT. ANN. tit. 68, § 2373 (West 2013), 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

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.¹⁹
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.²⁰
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.²¹
8. The Oklahoma Supreme Court held in *Neer*,²² 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.

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]

¹⁹ OKLA. STAT. ANN. tit. 68, § 2368(G) (West 2013).

²⁰ See OKLA. STAT. ANN. tit. 68, § 216 (West 2001).

²¹ OKLA. ADMIN. CODE § 710:50-9-2. Exceptions not pertinent to this matter are set out in OTC Rule 710:50-5-13 (June 26, 1994). See Note 18, *supra*.

²² *Neer v. State ex rel. Oklahoma Tax Com’n*, 1999 OK 41, 982 P.2d 1071, ¶ 11. See also *Matlock v. State ex rel. Okl. Tax Com’n*, 2001 OK CIV APP 104, 29 P.3d 614.

9. General principles of equity may not override statutory requirements for timely filing of tax refund claims.²³ 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.²⁴
10. 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 and interest will accrue from the 15th day of the fourth month following the close of the taxable year.²⁵
11. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.²⁶

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

²⁴ OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). See *Jones v. Liberty Glass Co.*, 332 U.S. 524.

²⁵ OKLA. ADMIN. CODE § 710:50-3-3 (July 1, 2008). See OKLA. ADMIN. CODE § 710:1-3-30 (June 11, 2005).

²⁶ 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.

DISCUSSION

The original due date of the Protestant's income tax return for the 2009 Tax Year was April 15, 2010.²⁷ Pursuant to Section 2373(c) of Title 68 and Tax Commission Rule 710:50-9-2,²⁸ the statutorily prescribed time period for the Protestant to request a refund on the 2009 Return was Monday, April 15, 2013.

The Protestant filed her 2009 Return on May 15, 2013, which is more than three (3) years from the due date of the return. The Protestant's defense, which is equitable in nature, does not override the filing requirement mandated by Oklahoma Statute and Tax Commission Rule.²⁹

CONCLUSION

The Protestant has failed to meet her burden of proof, by preponderance of the evidence, that the Division's denial of income tax refund for the 2009 Return was incorrect and in what respects.

²⁷ See Note 19, *supra*. See also Note 22, *supra*. In *Matlock* the court held, "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."

²⁸ See Note 18, *supra*.

²⁹ See Notes 23-24, *supra*.

DISPOSITION

The OKLAHOMA TAX COMMISSION ORDERS the denial of the protest to the Division's denial of the Protestant's refund reflected on the 2009 Return, based upon the facts and circumstances of this case, 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."