

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2014-02-04-08 / NON-PRECEDENTIAL
ID: P-13-120-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 and through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On August 13, 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 August 13, 2013, the Court Clerk (“Clerk”)⁴ mailed the introductory letter to the Protestant advising the parties of the case assignment to ALJ, Administrative Law Judge (“ALJ”), and docketed as Case Number P-13-120-H. The letter advised the Protestant a Notice of Prehearing Teleconference 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 August 15, 2013, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division. On August 15, 2013, the Clerk mailed the Notice of Prehearing Teleconference to the parties setting the prehearing teleconference for October 1, 2013, at 10:30 a.m. The Clerk mailed the notice to the Protestant’s last-known address.⁶

¹ “pro se” (proh say or see), *adv. & adj.* [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), available at <http://westlaw.com>.

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. Unless otherwise noted herein, the ALJ notifies the parties by letter.

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

The ALJ held the prehearing teleconference as scheduled on October 1, 2013, at 10:30 a.m. The Protestant failed to appear. OTC ATTORNEY appeared via telephone. On October 7, 2013, the Clerk mailed the Prehearing Conference Order to the parties advising the Division to file a verified response on or before October 31, 2013. The letter advised the Protestant could file a reply on or before November 15, 2013, at which time; the ALJ would close the record and submit the case for decision.⁷ On October 28, 2013, the Division filed its Verified Response, with Exhibits A through H, attached thereto. The verification attached to the response was duly sworn under oath, on behalf of the Division, by AUDITOR, Auditor, Account Maintenance Division, Oklahoma Tax Commission.⁸ On October 29, 2013, the ALJ acknowledged receipt of the Division's Verified Response and advised the Protestant to file a reply on or before November 15, 2013. The Protestant did not file a reply to the Division's Verified Response.

The ALJ notified the parties that the record in this matter closed and the case submitted for decision on November 27, 2013.⁹

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, the undersigned finds:

1. On May 16, 2013, the Tax Commission received the Protestant's Individual Income Tax Return (Form 511) for the 2009 Tax Year ("2009 Return"), which reflects a refund of \$564.00.¹⁰

2. On May 21, 2013, the Tax Commission received the Protestant's Individual Income Tax Return (Form 511) for the 2008 Tax Year ("2008 Return"), which reflects a refund of \$239.00.¹¹

3. On June 13, 2013, the Division notified the Protestant by letters,¹² that it had denied the refunds for the 2008 and 2009 Tax Years, which in pertinent part, states as follows, to-wit:

⁷ Division's Exhibit H.

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

⁹ OKLA. ADMIN. CODE § 710:1-5-39 (June 25, 1999).

¹⁰ Division's Exhibit E. See Division's Exhibit B. The return reflects a sales tax credit of \$120.00, which the Division refunded to the Protestant.

¹¹ *Id.* Division's Exhibit A. The return reflects a sales tax credit of \$120.00, which the Division refunded to the Protestant.

¹² Division's Exhibits C and F. The Division mailed the denial letter to the Protestant's last-known address, which is the address on the return for 2008 and 2009

YOUR [2008 & 2009] OKLAHOMA INCOME TAX REFUND HAS BEEN BARRED BY STATUE 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)

4. On June 24, 2013, the Division received a written protest to the denial of Protestant's refund for the 2008 and 2009 Tax Years. The basis for the protest is equitable in nature, which is more fully set forth therein.¹³ The Protestant does not dispute that the 2008 and 2009 Returns were filed past the statutorily prescribed period contained in Section 2373 of Title 68.¹⁴ The Protestant did not request an oral hearing.¹⁵

CONCLUSIONS OF LAW

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

2. 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

3. 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

Tax Years. See Note 6, *supra*.

¹³ Division's Exhibit D.

¹⁴ See Note 18, *infra*.

¹⁵ See Note 13, *supra*. See also OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

¹⁶ *Id.* OKLA. STAT. ANN. tit. 68, § 207 (West 2001).

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

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

4. For the 2008 and 2009 Tax Years, “All returns, except corporate 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.”¹⁹

5. 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 A refund that is “barred by statute” cannot be used as payment on any delinquent account or applied to estimated tax.²¹

6. 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.

7. 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.²³

8. It is fundamental law that all persons are charged with knowledge of the laws that affect them.²⁴

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 also Note 18, *supra*.

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

²³ OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002).

²⁴ OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). See *Ponder v. Ebey*, 1944 OK 271, 152 P.2d 268.

9. General principles of equity may not override statutory requirements for timely filing of tax refund claims.²⁵ 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.²⁶

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.²⁷

11. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.²⁸

²⁵ *Id.* See *Republic Petroleum Corp. v. United States*, 613 F.2d 518.

²⁶ *Id.* See *Jones v. Liberty Glass Co.*, 332 U.S. 524.

²⁷ OKLA. ADMIN. CODE § 710:50-3-3 (July 1, 2008). See OKLA. ADMIN. CODE § 710:1-3-30 (June 11, 2005).

²⁸ 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 dates of the Protestant's income tax returns for the 2008 and 2009 Tax Years were April 15, 2009 and April 15, 2010, respectively.²⁹ Pursuant to Section 2373(c) of Title 68 and Tax Commission Rule 710:50-9-2,³⁰ the statutorily prescribed time period for the Protestant to request refunds on the 2008 and 2009 Returns were Monday, April 16, 2012³¹ and Monday, April 15, 2013, respectively.

The Protestant filed her 2008 and 2009 Returns on May 21, 2013, and May 16, 2013, respectively, which is more than three (3) years from the due date of the returns. The Protestant's defense, which is equitable in nature, does not override the filing requirement mandated by Oklahoma Statute and Tax Commission Rule.³²

CONCLUSION

The Protestant has failed to meet her burden of proof, by preponderance of the evidence, that the Division's denial of income tax refunds for the 2008 and 2009 Returns were incorrect and in what respects.

²⁹ 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."

³⁰ *Id.*

³¹ See Note 20, *supra*.

³² See Notes 25-26, *supra*.

DISPOSITION

The OKLAHOMA TAX COMMISSION ORDERS the denial of the protest to the Division's denial of the Protestant's refunds reflected on the 2008 and 2009 Returns, based upon the facts and circumstances of this case, as more fully 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."