

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2014-02-25-05 / NON-PRECEDENTIAL  
**ID:** P-13-093-K  
**DATE:** FEBRUARY 25, 2014  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### ORDER

Protestants, HUSBAND and WIFE appear pro se. 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 May 8, 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 \$2,858.00. The Division audited the return and by letter dated June 14, 2013, notified Protestants that the refund was barred. Protestants timely protested the refund denial.

On June 26, 2013, 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-13-093-K and assigned to ALJ, Administrative Law Judge.<sup>3</sup>

A pre-hearing teleconference was scheduled for August 15, 2013, by the *Prehearing Teleconference Notice* issued June 28, 2013.<sup>4</sup> Pursuant to the conference, a *Prehearing Conference Order and Notice of Alternative Hearing Date* was issued setting forth the procedure by which the protest would be submitted for decision.

A *Joint Stipulation of Facts and Statement of Issue* was filed October 11, 2013, with Exhibits 1 through 6 attached thereto. The *Brief of the Compliance Division* was filed November 19, 2013. Protestants did not file a brief in chief or response brief. On January 9, 2014, the record was closed and the protest was submitted for decision.<sup>5</sup>

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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> OAC 710:1-5-39.

**FINDINGS OF FACT**

Upon review of the file and records, including the joint stipulation of facts and exhibits, and the brief of the Division, the undersigned finds:

- A. The parties stipulate to the following:<sup>6</sup>
1. On November 25, 2009, Protestant \* \* \* purchased a Star 48 LSV/NEV Electric Vehicle ('the Vehicle') for \$8,800.00. The vehicle [sic] constituted 'qualified electric motor vehicle property' under the terms of 68 O.S. Supp. 2009, § 2357.22(C).
  2. On December 21, 2009, Protestant \* \* \* registered the Vehicle in Oklahoma and an Oklahoma Certificate of Title was issued thereon.
  3. On May 8, 2013, Protestants filed a joint amended 2009 Oklahoma income tax return. On Line 15D, Column B, of the return they claimed a 511 CR 'other credit' of \$4,400.00. Attached to the return was a Form 567-B, 'Credit for Investment in Qualified Electric Motor Vehicle Property,' upon which the \$4,400.00 511 credit for purchase of the Vehicle was reported. The amended 2009 return claimed a refund of \$2,858.00 resulting from the credit for purchase of the Vehicle.
  4. The due date for Protestants' original 2009 return was April 15, 2010.
  5. The Division examined the amended return, and by letter dated June 14, 2013, denied Protestants' refund claim for the reason that it was made more than three (3) years after the due date of the original return for the year in question.
  6. On June 19, 2013, the Division received Protestants' letter of protest to the refund claim denial.

**ISSUE AND CONTENTIONS**

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<sup>6</sup> References to exhibits in support of the statements are omitted.

The issue as framed by the parties is “[w]hether Protestants’ refund claim based on the ‘Credit for Investment in Qualified Electric Motor Vehicle Property’ is time-barred under the provisions of 68 O.S. 2011, § 2373.”<sup>7</sup> Notwithstanding the reason for the overpayment of tax, the issue is whether Protestants’ 2009 amended income tax return claiming the refund was timely filed.

Protestants question the bar to their refund claim, arguing that the Commission has determined the vehicle in question qualifies for the subject credit and they have shown their eligibility to claim the credit.

The Division contends that the decision to bar Protestants’ refund claim is proper. In support of this contention, the Division shows that Protestants’ amended 2009 income tax return was filed on May 8, 2013, twenty-three (23) days after the deadline for filing a refund claim for the 2009 tax year. The Division argues 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 further argues that neither of the two exception to the timely filing requirements of § 2373 are applicable to this case.

### 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:

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<sup>7</sup> Citation to the 2011 Oklahoma Statutes is immaterial to the issue presented as there have been no substantive changes to the provisions of § 2373 since it was last amended by Laws 1997, c. 294, § 23, eff. July 1, 1997.

§ 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

The bar to Protestants' refund results not from the denial of the subject credit, but from the failure to timely claim the benefits of the credit. Protestants' amended 2009 income tax

return was filed after April 15, 2013. The exceptions to the timely filing requirements of § 2373 are not applicable in this case. Accordingly, the Division action was proper and correct.

### **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.”