JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2014-09-30-07 / NON-PRECEDENTIAL**
ID: **P-14-043-H**
DATE: **SEPTEMBER 30, 2014**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NONE**

ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendation made and entered by the Administrative Law Judge on the 11th day of September, 2014, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

NOW on this 11th day of September, 2014, the above-styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. PROTESTANT ("Protestant") appears through REPRESENTATIVE, Accounting & Tax Partner, ACCOUNTING FIRM. The Account Maintenance Division ("Division") of the Oklahoma Tax Commission appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On April 17, 2014, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[1] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[2] On April 17, 2014,

[1] OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2014).

[2] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

the Court Clerk ("Clerk")[3] mailed the Introductory Letter to the Protestant's Representative that this matter had been assigned to ALJ, Administrative Law Judge ("ALJ"), and docketed as Case Number P-14-043-H. The letter also advised the Protestant's Representative that 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.*[4] On April 23, 2014, OTC ATTORNEY filed an Entry of Appearance as Division's Counsel of record. On April 24, 2014, the Clerk mailed the Notice of Prehearing Teleconference to the last-known address of the Protestant's Representative, setting the prehearing conference for June 12, 2014, at 11:00 a.m.[5]

On June 12, 2014, at 11:00 a.m. the ALJ conducted the Prehearing Teleconference as scheduled. OTC ATTORNEY appeared on behalf of the Division. REPRESENTATIVE failed to appear on behalf of the Protestant. On June 12, 2014, the ALJ issued the Prehearing Conference Order directing the Division to file a Verified Response on or before July 14, 2014 and the Protestant to file a Reply on or before July 29, 2014, at which time the ALJ would close the record and submit this matter for decision. On June 23, 2014, the Division filed its *Verified Response*, with Exhibits A through F, attached thereto. The *Verification* attached to the Division's *Verified Response* was duly sworn under oath, on behalf of the Division, by AUDITOR, Auditor, Case Management Section, Account Maintenance Division, Oklahoma Tax Commission.[6]

---

[3] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 2009).

[4] *Id.* Unless otherwise noted herein, the ALJ notified the parties by letter.

[5] OKLA. STAT. ANN. tit. 68, § 208 (West 2014). The Clerk mailed the notice to the Protestant's Representative c/o ACCOUNTING FIRM., ADDRESS.

[6] *See* OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

On August 1, 2014, the ALJ acknowledged receipt of the Division's *Verified Response*, and that as of August 1st, the Clerk had not received a *Reply* from the Protestant's Representative. The ALJ advised the parties that the record was closed and this case submitted for decision on July 29, 2014.

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 January 3, 2014, the Protestant filed her Oklahoma Resident Income Tax Return ("Return") for the 2009 Tax Year. The Return reflected a refund of $4,111.00.[7]

2. On February 14, 2014, the Compliance Division mailed a letter to the Protestant advising that "… [the] claim for refund/overpayment in the amount of $4,111.00 on your income tax return has been adjusted. All or part of your 2009 Oklahoma income tax refund has been barred by statute since your claim was not filed within the allowed time of three (3) years from the date the tax was paid."[8]

3. On April 9, 2014, the Protestant filed a timely protest to the Division's denial of the refund for the 2009 Tax Year. The basis of the protest is stated in pertinent part,[9] as follows, to-wit:

> We base the request due to taxpayer gave three years of taxes to a CPA firm and he kept the returns for six months. She made many attempts to pick them up. The taxpayer paperwork was returned six months later and he said it was too much work to do the returns. The paperwork was organized and detailed by revenue and expenses. She later contacted us to process her returns.

[7] Division's Exhibit A.

[8] Division's Exhibit B.

[9] Division's Exhibit C. The protest does not request an oral hearing.

4. On April 24, 2014, the ALJ mailed to the parties a Prehearing Teleconference Notice setting the teleconference for June 12, 2014, at 11:00 a.m.[10]

5. On June 12, 2014, at 11:00 a.m., the ALJ conducted the Prehearing Teleconference as Scheduled. AGC appeared by telephone on behalf of the Division. The Protestant's Representative failed to appear by telephone for the Prehearing Teleconference.[11]

6. On June 12, 2014, the ALJ issued a Prehearing Conference Order advising that the Notice of Prehearing Conference had been mailed to the Protestant's Representative at his last-known address, and that the Protestant had not requested an oral hearing in the letter of protest. The ALJ directed the Division to file a Verified Response on or before July 14, 2014, with the Protestant to file a Reply on or before July 29, 2014, at which time the ALJ would close the record and submit the case for decision.[12]

7. On August 1, 2014, the ALJ acknowledged the filing of the Division's *Verified Response*, and the Protestant's failure to file a Reply on or before July 29, 2014. The ALJ closed the record and submitted this matter for decision as of July 29, 2014.[13]

CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.[14]

2. If a party fails to appear at the scheduled pre-hearing conference or to timely respond to the notice of pre-hearing conference, but has previously submitted a written request for a

[10] Division's Exhibit E. *See* Procedural History herein.

[11] *Id.*

[12] *Id.* *See* Division's Exhibit F.

[13] *Id.*

[14] OKLA. STAT. ANN. tit. 68, § 221(C) (West 2014).

hearing on the protest, then a hearing will be set. If a hearing has not been requested, then the Division will be directed by the Administrative Law Judge to file a response to the protest, verified by the Division, and signed by the attorney representing the Division. If a party files a reply to the Division's Verified Response, and requests a hearing therein, then the Administrative Law Judge may set the matter for hearing on the merits of the protest, and thereafter, enter recommendations to the Commission in accordance with the findings. If a party files a reply to the Verified Response and does not request a hearing, then the Administrative Law Judge will consider the reply in making a recommendation to the Commission. If a party fails to file a reply to the Verified Response, then the Administrative Law Judge will issue Findings, Conclusions and Recommendations. Any party aggrieved by the recommendation may proceed pursuant to 710:1-5-40.[15]

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.[16]

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.[17]

---

[15] OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999). *See* OKLA. ADMIN. CODE § 710:1-5-40 (June 1, 2011).

[16] OKLA. STAT. ANN. tit. 68, § 2385.10 (West 2013).

[17] 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

5. For the 2009 tax year, "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."[18]

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.[19]

7. The Oklahoma Supreme Court held in *Neer v. State ex rel. Oklahoma Tax Com'n*, 1999 OK 41, 982 P.2d 1071, ¶ 11 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.

8. 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.[20]

9. General principles of equity may not override statutory requirements for timely filing of tax refund claims.[21] 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.[22]

> 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]

[18] OKLA. STAT. ANN. tit. 68, § 2368(G) (West 2013).

[19] *See* Note 17, *supra*. See also OKLA. STAT. ANN. tit. 68, § 216 (West 2014).

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

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

10. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[23] A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[24]

DISCUSSION

The original due date of the Protestant's 2009 Return was Thursday, April 15, 2010.[25] Pursuant to Section 2373 of Title 68 and Tax Commission Rule 710:50-9-2, the statutorily prescribed period for the Protestant to request a refund on the Return for the 2009 Tax Year was Monday, April 15, 2013.[26]

The basis of the protest is that the Protestant filed the Return for the 2009 Tax Year past the three (3) year period (April 15, 2013), prescribed by statute.[27] Due to equitable reasons, as

---

[22] *Id. See Jones v. Liberty Glass Co.*, 332 U.S. 524.

[23] 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.

[24] *See Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

[25] *See* Note 18, *supra*. *See also Matlock v. Oklahoma Tax Com'n*, 2001 OK CIV APP 104, 29 P.3d 614, which 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."

[26] *See* Note 17, *supra*.

[27] *Id.*

more fully set forth in the protest letter,[28] the Protestant filed her 2009 Return on January 7, 2014, which is more than three (3) years from the due date of the Return for the 2009 Tax Year.[29]

As to the basis of the Protestant's position, "General principles of equity may not override statutory requirements for timely filing of tax refund claims."[30]

CONCLUSION

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

RECOMMENDATIONS

The ALJ recommends denial of the protest 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. 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002).

[28] *See* Note 9, *supra.*

[29] *Id.*

[30] *See* Notes 21-22, *supra.*