JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2014-12-02-09 / NON-PRECEDENTIAL**
ID: **P-14-025-K**
DATE: **DECEMBER 2, 2014**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

ORDER

Protestants, HUSBAND AND WIFE appear pro se. The Account Maintenance 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

An original 2009 Oklahoma income tax return was filed by Protestants on or after September 27, 2013 claiming an overpayment of $71,420.00 to be applied to their 2010 estimated tax. By automated letter dated October 10, 2013, the Division denied the refund (carryover of the overpayment) as barred by statute. Protestants timely protested the Division's action.

On March 19, 2014, the protest and corresponding records of the Division were referred to the Office of the Administrative Law Judges for the appeal proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Office of Administrative Law Judges[2]. The case was docketed as P-14-025-K and assigned to the undersigned.[3]

A pre-hearing conference was scheduled for May 8, 2014, by *Prehearing Teleconference Notice* issued March 24, 2014.[4] The teleconference was twice stricken and ultimately rescheduled for July 8, 2014, by *Prehearing Teleconference Notice* issued June 9, 2014. Pursuant to the teleconference, a *Notice of Hearing* was issued scheduling the hearing for September 16, 2014, and directing the parties to file position letters or memorandum briefs on or before September 9, 2014.

A *Motion to Re-Style Case Caption* with Exhibits A through C attached thereto was filed September 5, 2014, which motion was granted by *Order Granting Motion to Re-Style Case*

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[1] 68 O.S. 2011, § 201 et seq., as amended.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[3] *OAC* 710:1-5-22(b).

[4] *OAC* 710:1-5-28(a).

Caption issued September 8, 2014. The *Brief of the Account Maintenance Division* was filed September 9, 2014. Protestants' *Brief* was filed September 15, 2014.

A closed hearing was held as scheduled.[5] HUSBAND appeared and gave his statement to the Court. The Division called one witness, AUDITOR, Auditor for the Division who testified with respect to the records of the Division and the reasons for the denial of the claim to a carry-forward of the 2009 estimated income taxes. Exhibits A, C and D were identified, offered and admitted into evidence. The parties were allowed to make closing statements, whereupon the record was closed and the protest was submitted for decision.[6]

FINDINGS OF FACT

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

1. The due date for filing an original paper 2009 Oklahoma individual income tax return made on the basis of the calendar year was April 15, 2010[7]. 68 O.S. Supp. 2007, § 2368(G)(1).

2. Protestants' 2009 original paper Oklahoma income tax return was filed on or about September 27, 2013.[8] Exhibit A.

3. The 2009 return reported an overpayment of $71,420.00 which was to be applied to Protestants' 2010 estimated tax payments. *Id.*

4. The Division examined the return and by letter dated October 10, 2013, denied the claim to the overpayment and carry-forward of the income taxes as barred by statute. Exhibit C.

5. Protestants timely protested the Division's notice, asserting *inter alia* that it is their understanding that the state follows the Internal Revenue Code in regarding to the timing for filing income tax returns, that they filed the 2009 federal income tax return within the same time period as the state return and that the federal return was accepted and the overpayment was applied to their 2010 taxes. Exhibit E.

ISSUE

[5] Confidentiality was invoked pursuant to 68 O.S. 2011, § 205.

[6] *OAC* 710:1-5-39.

[7] April 15, 2010 fell on a Thursday and was not a holiday.

[8] The signature date as indicated on the return.

The issue presented for decision is whether the Division erred in denying the 2009 overpayment of income taxes and carry-forward of the same as barred by statute.

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 state cannot be sued for the recovery of taxes paid in absence of legislative consent to such suit, and hence the right to recover taxes so paid must be found in a statute." ***Sullivan v. Oklahoma Tax Commission***, 1954 OK 266, 283 P.2d 521, head note 1. "When examining a statutory remedy to recover tax payments, [the court has] said that '[g]enerally, when a statute creates both a right and a remedy for its enforcement the statutory remedy is exclusive.'" ***Apache Corp. v. Oklahoma Tax Commission***, 2004 OK 48 at ¶ 10, 98 P.3d 1061, 1064, *citing* ***R.R. Tway, Inc. v. Oklahoma Tax Commission***, 1995 OK 129, 910 P.2d 972, 978.

3. 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.

4. 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 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.

5. State income tax is due at the time of transmitting the return required under the Act. 68 O.S. Supp. 2007, § 2375(A). "All 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).

6. Tax year 2009 "paper"[9] income tax returns made on the basis of a calendar year were due and the estimated and/or withheld income taxes with respect to those years were deemed paid on April 15, 2010. *OAC* 710:50-3-3(a). To be timely, claims for refund for the 2009 tax year were required to be filed within three (3) years of the due date of the return. 68 O.S. Supp. 2007, § 2373.

7. The provisions of § 2373 apply to the filing of an original return where the return is not filed within three (3) years of the original due date of the return. *OAC* 710:50-9-2; Oklahoma Tax Commission Order No. 91-06-06-04.

8. 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).

9. Taxpayers are charged with knowledge of the laws that affect them. Oklahoma Tax Commission Order No. 2006-03-23-07 (Prec.), *citing Ponder v. Ebey*, 1944 OK 271, 194 Okla. 407, 152 P.2d 268; *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 64 S.Ct. 599 (1994). Ignorance of the law, standing alone, is no defense. The rule, long-standing and well-known, is found in ***Campbell v. Newman***, 1915 OK 538, ¶3, 151 P. 602, 603 which cites *Utermehle v. Norment*, 197 U.S. 40, 25 S.Ct. 291, 49 L.Ed. 655 (1905), "We know of no case where mere ignorance of the law, standing alone, constitutes any excuse or defense against its enforcement. It would be impossible to administer the law if ignorance of its provisions were a defense thereto."

10. "For all taxable periods covered by the Oklahoma Income Tax Act, the tax status and all elections of all taxpayers covered by the Oklahoma Income Tax Act shall be the same for all purposes material hereto as they are for federal income tax purposes except when the Oklahoma Income Tax Act specifically provides otherwise." 68 O.S. Supp. 2006, § 2353(3). The time limits for filing income tax claims for refund are specifically addressed and governed by the provisions of the Oklahoma Income Tax Act. 68 O.S. Supp. 2007, § 2373.

11. An extension of time for filing a return does not "extend the date on which any payment of a state tax is due", 68 O.S. 2001, §§ 216 and 2375(A), and Oklahoma Tax Commission Order Nos. 92-12-29-024 and 92-03-26-033[10]; and does not extend the provisions of § 2373, ***Matlock v State, ex rel. Oklahoma Tax Commission***, 2001 OK CIV APP 104, 29 P.3d 614.

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[9] Returns not filed electronically.

[10] Estimated or withheld income taxes are deemed paid on the due date of the return notwithstanding a federal or Oklahoma extension, citing § 216.

12. Protestants' claim to the overpayment of income taxes for the 2009 tax year is barred by the provisions of § 2373 since the return for the 2009 tax year was not timely filed.

ORDER

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. 2014) 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."