JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2015-04-28-04 / NON-PRECEDENTIAL**
ID: **P-14-096-H**
DATE: **APRIL 28, 2015**
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 9TH day of April, 2015, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

NOW on this 9TH day of April, 2015, 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 pro se.[1] The Case Management Section, Account Maintenance Division ("Division") of the Oklahoma Tax Commission appears through OTC ATTORNEY, Assistant General Counsel, and OTC INTERN, Licensed Legal Intern, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On October 2, 2014, 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 October 3, 2014, the Court Clerk ("Clerk")[4] mailed the Introductory Letter to the Protestant advising that this matter had been assigned to ALJ, Administrative Law Judge ("ALJ"), and docketed as Case Number P-14-096-H. The letter also advised the Protestant that a Prehearing Teleconference Notice would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before*

[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 2014).

[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, 2009).

the Office of Administrative Law Judges.[5] On October 6, 2014, OTC ATTORNEY filed an Entry of Appearance as Division's Counsel of record. On October 6, 2014, the Clerk mailed the Prehearing Teleconference Notice to the Protestant's last-known address setting the prehearing conference for December 2, 2014, at 10:00 a.m.[6] On October 6, 2014, the U.S. Postal Service returned the Introductory Letter to the Clerk marked as "FORWARD TIME EXP/RTN TO SENDER," Protestant, ADDRESS. On October 8, 2014, the U.S. Postal Service returned the Prehearing Teleconference Notice to the Clerk with the same information.

On December 2, 2014, the Clerk mailed another Introductory Letter and Prehearing Teleconference Notice to the Protestant's forwarding address setting the Prehearing Teleconference for February 3, 2015, at 10:00 a.m.[7]

On January 21, 2015, OTC ATTORNEY and OTC INTERN filed an Entry of Appearance as Additional Representative for the Division ("EOA").[8]

On February 3, 2015, at 10:00 a.m. the ALJ conducted the Prehearing Teleconference as scheduled. The Protestant appeared not. OTC ATTORNEY and OTC INTERN appeared via telephone. On February 3, 2015, the Clerk mailed the Order Directing Division to File Verified Response on or before March 5, 2015, and the Protestant to file a reply on or before March 20, 2015.[9] On February 25, 2015, the Division filed its Verified Response to Protest, 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 CASE WORKER, Case Management Section, Account Maintenance Division, Oklahoma Tax Commission.[10] On February 26, 2015, the ALJ acknowledged receipt of the Division's Verified Response, and advised the Protestant to file a reply on or before March 20, 2015, at which time the ALJ would close the record and submit this case for decision. The Protestant failed to file a reply to the Division's Verified Response.

On March 26, 2015, the ALJ closed the record and submitted this case for decision on March 26, 2015.

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

[6] OKLA. STAT. ANN. tit. 68, § 208 (West 2014). The Clerk mailed to the Protestant at ADDRESS.

[7] Id. The Clerk mailed to the Protestant's "forwarding address" at FORWARDING ADDRESS.

[8] Attached to the EOA was an "Omnibus Authorization of Executive Director to Representation by Licensed Legal Intern" dated January 8, 2015.

[9] The ALJ notes that the U.S. Postal Service did not return the second mailings to the Protestant at FORWARDING ADDRESS.

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

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the Division's Verified Response, the undersigned finds:

1. On or about May 21, 2014, the Protestant filed her Oklahoma Resident Income Tax Return for the 2010 Tax Year. The 2010 Return reflected a refund of $334.00.[11]

2. On June 20, 2014, the Division mailed a letter to the Protestant advising as follows,[12] to-wit:

> Your claim for refund/overpayment in the amount of $334.00 on your income tax return has been adjusted. All or part of your 2010 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.

3. On July 10, 2014, the Division received a protest to the Division's denial of the refund for the 2010 Tax Year. The protest states in pertinent parts,[13] as follows, to-wit:

> The intent of this letter is to inquire about an exception being made. During 2010 I separated from a business and later that year was diagnosed with … disease. …I just wanted to see if a onetime exception could be granted. …

CONCLUSIONS OF LAW

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

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.[15]

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.[16]

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[11] Division's Exhibit A.

[12] Division's Exhibit B.

[13] Division's Exhibit C.

[14] OKLA. STAT. ANN. tit. 68, § 207(C) (West 2014).

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

[16] 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

4. For the 2010 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."[17]

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.[18]

6. The Oklahoma Supreme Court held *Neer* as follows,[19] 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.[20]

8. 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]

> 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. 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]

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

[18] *See* Note 16, *supra*.

[19] *Neer v. State ex rel. Oklahoma Tax Com'n*, 1999 OK 41, 982 P.2d 1071, ¶ 11.

[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.

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

9. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[23]

10. 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 2010 Return was Friday, April 15, 2011.[25] Pursuant to Section 2373 of Title 68[26] and Tax Commission Rule 710:50-9-2,[27] the statutorily prescribed period for the Protestant to request a refund on the Return for the 2009 Tax Year was Tuesday, April 15, 2014.[28]

The basis of the protest is equitable in nature, and more fully set forth in the protest letter.[29]

The Division responds, "When an original return has not been filed, the Commission will not issue a refund claimed on an original individual income tax return filed more than three (3) years after the original due date of the return. O.A.C.§710:50-9-2." The Division bases its

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[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* Notes 11, 15-19, *supra.* On or about May 21, 2014, the Protestant filed her Return for the 2010 Tax Year. *See also* OTC Order No. 2012-07-24-04 (July 24, 2012). Whether the Protestant's due date is April 15th or April 18th does not affect the outcome of this matter.

[26] *Id. See* Note 16, *supra.*

[27] *Id.*

[28] *Id.*

[29] *See* Note 13, *supra.*

position upon the Supreme Court of Oklahoma's holding in *Neer*,[30] which held that Section 2373 of Title 68 was a "statue of repose," which sets an outer chronological boundary beyond which no cause of action may arise for conduct that would otherwise have been actionable.[31] Section 2373 of Title 68 is a "…legislatively crafted outer limit time boundary beyond which taxpayers' right to recover a refund no longer exists."[32]

General principles of equity may not override statutory requirements for timely filing of tax refund claims.[33] 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.[34]

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 2010 Tax Year was incorrect, and in what respects.

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[30] *See* Note 19, *supra*. *See also* Notes 15-18, *supra*.

[31] *Id.*

[32] *See* Note 19 at ¶ 2. As in Neer, none of the statutorily delineated exceptions in Section 2373 applies in this matter.

[33] *See* Note 21, *supra*.

[34] *See* Note 22, *supra*.

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).