JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2015-05-05-08 / NON-PRECEDENTIAL**
ID: **P-14-092-H**
DATE: **MAY 5, 2015**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NONE TAKEN**

order

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears through CPA, CPA, FIRM, PLC. 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 September 26, 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 September 29, 2014, the Court Clerk ("Clerk")[3] mailed the Introductory Letter to the Protestant's Representatives advising that this matter had been assigned to ADMINISTRATIVE LAW JUDGE, Administrative Law Judge ("ALJ"), and docketed as Case Number P-14-092-H. The letter also advised the Protestant's Representatives 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 September 30, 2014, OTC ATTORNEY filed an Entry of Appearance as Division's Counsel of Record. On September 30, 2014, the Clerk mailed the Prehearing Teleconference Notice to the last-known address of the Protestant's Representatives, setting the prehearing conference for November 20, 2014, at 10:00 a.m.[5]

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

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

[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 Representatives c/o FIRM,PLC, FIRM ADDRESS.

On November 20, 2014, at 10:00 a.m. the ALJ conducted the Prehearing Teleconference as scheduled. The ALJ requested the Protestant's Representatives to file a Power of Attorney before this matter could be set for hearing.

On December 2, 2014, by facsimile, FIRM, PLC filed a copy of the Power of Attorney signed by the Protestant appointing CPA, CPA and ENROLLED AGENT, Enrolled Agent as his Representatives in this matter.[6] On December 2, 2014, the ALJ set this matter for hearing on January 20, 2015, at 9:30 a.m., with position letters and/or memorandum briefs due on or before January 13, 2015.

On January 13, 2015, by facsimile, the Protestant filed his Position Letter. The Protestant did not attach exhibits. On January 13, 2015, the Division filed its Brief. The parties did not attach exhibits to their respective filings. On January 20, 2015, at 10:00 a.m. the ALJ convened an open hearing[7] as scheduled. At the request of the parties, the Division presented its case first. CPA made an Opening Statement on behalf of the Protestant. The Division waived its Opening Statement. The Division called AUDITOR, Auditor III ("Auditor"), Compliance Division, Oklahoma Tax Commission, who testified concerning the processing and review of the Protestant's Amended Return for 2009 Tax Year, and as custodian of the Division's records. The Division identified and offered Exhibits A through D, which the ALJ admitted into evidence without objection. The Protestant called ENROLLED AGENT, Enrolled Agent, FIRM, PLC, who testified about the preparation of the Protestant's Amended Returns for the 2009 and 2010[8] Tax Years, history of the Protestant with the firm, preparation of returns for other taxpayers claiming the "Electric Car Credit," and experience with the Oklahoma Tax Commission for other clients. The Protestant testified concerning the circumstances surrounding the preparation, receipt, and mailing of the Amended Returns for the 2009 and 2010 Tax Years. The Protestant called OFFICE MANAGER, Office Manager, who testified about "Standard Operating Procedures" for the Protestant's Office, and the mailing of the Amended Returns for the 2009 and 2010 Tax Years. The Protestant identified, and offered Exhibits A through D, which the ALJ admitted into evidence, without objection. The Division waived Closing Argument. CPA made a Closing Statement on behalf of the Protestant. The ALJ announced that the record would remain open for the Division to provide all microfilmed documents associated with the Amended Return for the 2010 Tax Year. The ALJ acknowledged receipt of the Division's Status Report, and attachments thereto, which the ALJ admitted into evidence as ALJ Exhibit 1, advised the parties that the record closed, and this case submitted for decision on January 29, 2015.

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[6] For purposes of the hearing, ENROLLED AGENT functioned as a "witness" only. The Division did not have any objection.

[7] The Protestant, through CPA, waived his right to a confidential hearing as provided by the provisions of OKLA. STAT. ANN. tit. 68, § 205 (West 2014).

[8] The Division received the Amended Return for the 2010 Tax Year on the same date it received the Amended Return for the 2009 Tax Year. The Amended Return for the 2010 Tax Year is not at issue in this matter.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the Protestant's Position Letter, and the Division's Brief, the undersigned finds:

1. On September 12, 2013, the Protestant filed his Amended Oklahoma Resident Income Tax Return ("Amended Return") for the 2009 Tax Year. The 2009 Amended Return reflected a refund of $OMITTED.[9]

2. On October 24, 2013, the Division mailed a letter to the Protestant advising as follows,[10] to-wit:

LINE NUMBER	REASON FOR ADJUSTMENT
26	Your refund claim is barred by statute

3. On August 27, 2014, the Protestant filed a protest to the Division's denial of the refund for the 2009 Tax Year. The protest states in pertinent parts,[11] as follows, to-wit:

> The 2009 and 2010 511X returns were originally prepared and mailed to the OTC on November 19, 2012. These were filed in order to claim the electric vehicle credit on the Tomberlin vehicle.[12] When I called the OTC on August 28, 2013 to check on the refund status for the taxpayer it was discovered that the returns were NOT in your system. "Not in your system?" I asked. I spoke to [employee] at the OTC and explained to her that the returns were submitted in November 2012, nearly a year ago. It was our conclusion/speculation that somehow the returns must have got lost or misplaced after they were mailed. We were aware of the statute of limitations for claiming the refund, which is why

[9] Auditor's Testimony. Division's Exhibits A through B. The Amended Return states, "THE AMENDED RETURN IS BEING FILED IN ORDER TO CLAIM THE STATE TAX CREDIT FOR INVESTMENT IN QUALIFIED ELECTRIC MOTOR VEHICLE PROPERTY (TOMBERLIN) ON FORM 567-B. THE FULL AMOUNT OF THE CREDIT IS LISTED ON LINE 15D OF THE 511X AND LINE 3B OF FORM 511-CR. THE NET RESULT IS A REFUND DUE TO THE TAXPAYER. THE UNUSED PORTION OF THE CREDIT WILL BE CARRIED FORWARD TO 2010 TAX YEAR." Auditor testified that the Tax Commission did not allow the filing of amended returns for the 2009 Tax Year electronically.

[10] Division's Exhibit C.

[11] Division's Exhibit D.

[12] *See Wilder v. Oklahoma Tax Com'n,* 2012 OK CIV APP 91, --- P.3d ----.

> the returns were filed in November 2012. Nonetheless, after discovering that the returns were not in your system, the 2009 and 2010 511X returns were re-submitted in September 2013 to be processed.
>
> Another thing that I discovered when I was talking to [employee] is that, for reasons unknown, your computer system was showing [Protestant] in your client database as "[First Name] MISSPELLED NAME". See enclosed letter from the OTC with the name discrepancy. The last 3 characters of his name were omitted from the system. Nobody seems to know how or why this happened, but clearly something strange was happening to his account. Perhaps this was a contributing factor in the 2009 and 2010 returns not being logged into your system when they were submitted last year.
>
> We understand that the refund claim is barred by statute. However, in light of the extenuating circumstances that have occurred, and the fact that the 2009 was actually mailed and submitted in a timely fashion in November 2012 (before the statute expired), we are asking that the refund claim be allowed in this instance. Another reason to allow the refund is the overall uncertainty that surrounded these electric vehicle credits for the past few years. As you may recall, this was an ongoing issue with the courts that left many taxpayers with an uncertain tax position as to when, or even if they could claim the credit.
>
> In summary, based on the facts and circumstances surrounding this case, we are asking for some leniency and fairness to be granted to allow the taxpayer's 2009 refund claim to be processed.

4. In its computer system, the Tax Commission keys every taxpayer's income tax return to his or her social security number, not by his or her name.[13]

5. The Protestant filed his Original Return for the 2009 Tax Year electronically, but the Tax Commission did not allow taxpayers to file amended returns electronically.[14]

6. The Protestant and EA were fully aware of the three (3) year period to file a refund for the 2009 Tax Year.[15]

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[13] Auditor's Testimony. *See* Note 9, *supra.*

[14] *Id.*

[15] Protestant's Testimony and EA's Testimony.

7. On July 6, 2013, the Tax Commission mailed a billing statement to the Protestant for the 2010 Tax Year. On the billing statement, the Protestant's name is [First Name] MISSPELLED NAME. The billing statement reflects the Protestant's correct mailing address and social security number.[16]

8. The Protestant's "Standard Operating Procedure" for his office is to send any mailing that contains a check by certified mail return receipt requested, but if the mailing does not contain a check, the Office Manager mails by first class only.[17]

CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.[18]

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.[19]

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.[20]

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[16] *Id.* Protestant's Exhibit D.

[17] Office Manager's Testimony.

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

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

[20] 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. 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-

4. 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."[21]

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.[22]

6. The Oklahoma Supreme Court held *Neer* as follows,[23] 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.[24]

8. The Tax Commission Rule on Timely Filing,[25] states as follows, to-wit:

> (a) General definition. When the last date for filing any document or performing any act required by the Oklahoma Tax Commission falls on a day when the offices are not open for business, the filing of the document or performance of the act shall be considered timely if it is performed by the end of the next business day.
>
> (b) When filing is by mail, timely filing shall be defined as follows. If any claim, statement, or other document required by law or agency Rule to be filed within a prescribed period, or on or

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5-13 also apply to certain refund situations. [**See:** 68 O.S. §2373]

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

[22] *See* Note 19, *supra.*

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

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

[25] OKLA. ADMIN. CODE § 710:1-3-30 (June 11, 2005).

> before a prescribed date, is delivered after the prescribed period or date, by the United States Postal Service or other delivery service designated by OAC 710:1-3-33 to the Oklahoma Tax Commission, at 2501 Lincoln Boulevard, Oklahoma City, Oklahoma 73194; the date of the United States postmark, stamped on the cover in which the claim, statement, or other document is mailed or the date recorded pursuant to OAC 710:1-3-33 by a designated delivery service shall be considered to be the date of delivery.
>
> (c) Application. This provision shall apply:
>
> (1) Determined with regard to any extension of time granted for the filing;
>
> (2) Only if the postmark date or date recorded by a designated delivery service falls within the prescribed period, or on or before the prescribed date for filing the claim, statement, or other document; and,
>
> (3) Only if the claim, statement, or other document was, within the prescribed time, deposited in the mail in the United States or placed with a designated delivery service, in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, office, or officer with which the claim, statement, or other document is required to be filed.

9. Under Tax Commission Rules, the Sender assumes the risk of untimeliness of mail,[26] as follows, to-wit:

> (a) The sender who relies upon the applicability of the definition of timely filing in 710:1-3-30 by mailing a claim, statement, or other document, assumes the risk that the postmark will bear a date, on or before the last date or day, of the period prescribed for filing the document.
>
> (b) If the postmark on the envelope or wrapper is not legible or the envelope is unavailable, the person who is required to file the document has the burden of proving when the postmark was made or when the claim, statement, or other document was placed for delivery with a designated delivery service. [See: OAC 710:1-3-33]

10. The documentation to avoid the risk of untimeliness is as follows,[27] to-wit:

[26] OKLA. ADMIN. CODE § 710:1-3-31 (June 11, 2005).

> (a) If a document is sent by United States Registered Mail or by a delivery service designated in OAC 710:1-3-33, the date of registration of the document shall be treated as the postmark date.
>
> (b) If a document is sent by United States Certified Mail or by a delivery service designated in OAC 710:1-3-33, and the sender's receipt is dated by the service's employee, the date on the receipt shall be treated as the postmark date of the document.

11. Pursuant to Tax Commission Rules, Designated Delivery Services are as follows,[28] to-wit:

> (a) For purposes of filing any document or performing any act required by the Oklahoma Tax Commission, in addition to the United States Postal Service (USPS), the Commission may designate delivery services that are substantially equivalent to USPS registered or certified mail.
>
> (b) To qualify as a designated delivery service, the service must:
>
> (1) Be available to the general public;
> (2) Be as timely and reliable, on a regular basis, as the USPS; and,
> (3) Record electronically to its data base, kept in the regular course of business, the date on which the item was given to the service for delivery; or,
> (4) Mark on the cover of the item to be delivered, the date on which the item was given to the service for delivery.
>
> (c) The private delivery services set out in this subsection have been designated by the Tax Commission as meeting the required standards prescribed in (b) of this Section.
>
> (1) Airborne Express (Airborne)
> (A) Overnight Air Express Service
> (B) Next Afternoon Service
> (C) Second Day Service
> (2) DHL Worldwide Express
> (A) DHL "Same Day" Service

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[27] OKLA. ADMIN. CODE § 710:1-3-32 (June 11, 2005).

[28] OKLA. ADMIN. CODE § 710:1-3-33 (June 11, 2005).

(B) DHL USA Overnight
(3) Federal Express (FedEx)
(A) FedEx Priority Overnight
(B) FedEx Standard Overnight
(C) FedEx 2 Day
(D) FedEx International Priority
(E) FedEx International First
(4) United Parcel Service (UPS)
(A) UPS Next Day Air
(B) UPS Next Day Air Saver
(C) UPS 2nd Day Air
(D) UPS 2nd Day Air A.M.

(c) Only the designated private delivery services and the types of services listed in (c) of this Section qualify for consideration under the "timely filing" provision in 68 O.S. § 221.1. The designated private delivery services listed in this Section are effective until the Commission amends the list.

(d) The "timely filing" rule, OAC 710:1-3-30, does not apply if a taxpayer uses a business that contracts with a designated delivery service, but the business is not itself a designated delivery service.

12. General principles of equity may not override statutory requirements for timely filing of tax refund claims.[29] 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.[30]

13. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[31]

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[29] *See* Note 24, *supra. See Republic Petroleum Corp. v. United States*, 613 F.2d 518.

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

[31] 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:

14. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[32]

DISCUSSION

The original due date of the Protestant's 2009 Return was Thursday, April 15, 2010.[33] Pursuant to Section 2373 of Title 68[34] and Tax Commission Rule 710:50-9-2,[35] the statutorily prescribed period for the Protestant to request a refund on the Return for the 2009 Tax Year was Monday, April 15, 2013.[36]

The basis of the protest is that the Protestant's Office Manager mailed the Amended Returns for the 2009 and 2010 Tax Years in December 2012 by first class mail using the U.S. Postal Service, which satisfied the requirement to timely mail the return,[37] and that the OTC

> "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.

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

[33] *See* Notes 19-22, *supra.* On April 6, 2010, the Protestant filed his Original Return for the 2009 Tax Year electronically. *See also* Note 9, *supra.*

[34] *Id. See* Note 20, *supra.*

[35] *Id.*

[36] *Id.*

[37] Protestant testified that he has always filed his income tax returns on time, and that after receiving the mailing from the EA in November 2012, Protestant instructed his Office Manager to mail the Amended Returns for the 2009 and 2010 Tax Years, but that he did not personally witness the Office Manager mailing the Amended Returns. Protestant's Testimony. The Office Manager testified that December 2012, she mailed the Amended Returns for the 2009 and 2010 Tax Years by first class mail in the same envelope. Office Manager's Testimony. The Division has no record of receiving a December 2012 mailing from Protestant. Auditor's Testimony. According to the Division's records, it received the Amended Returns for the 2009 and 2010 Tax Years on September 12, 2013. *See* Note 9, *supra. See also* Protestant's Exhibits A and C.

either lost or misplaced the return.[38] The Protestant states, "The 'mailbox rule'[39] applies here – since it was put in the mail, it was presumed that it got where it needed to go within a reasonable time."[40] Office Manager testified that she mailed the Amended Returns to the OTC in December 2012.[41] The EA testified that [Protestant] has been a client of ours for over 25 years and has a history of always filing his returns on time.[42] "The OTC is not immune from making mistakes and errors, and that is what we are contending happened here. [Protestant] should be allowed the 2009 511X refund of $5,443, plus interest."[43] The Protestant states that he was aware of the three (3) year period, but that the *Neer* and *Matlock* cases are not applicable in this matter because "[Protestant] was aware of the statute to timely file this return, and he timely mailed the 2009 511X return to the OTC in December 2012, well before the expiration of the 3 year statute."[44]

The Division responds, "When an original individual income tax return filed more than three (3) years after the original due date of the return."[45] The Division bases its position upon the Supreme Court of Oklahoma's holding in *Neer*,[46] 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.[47]

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[38] Protestant's Position Letter at 2.

[39] *Id.* "mailbox rule" (1975) **1.** *Contracts*. The principle that an acceptance becomes effective — and binds the offeror — once it has been properly mailed. The mailbox rule does not apply, however, if the offer specifies that an acceptance is not effective until received. **2.** The principle that when a pleading or other document is filed or served by mail, filing or service is deemed to have occurred on the date of mailing. The mailbox rule varies from jurisdiction to jurisdiction. It may apply only to certain types of filings, or it may apply to the use of an overnight courier instead of the U.S. mail. — Also termed *dispatch rule*. BLACK'S LAW DICTIONARY (9th ed. 2009), available at *http://westlaw.com*. (Emphasis original.)

[40] *See* Note 38, *supra.*

[41] *Id. See* Protestant's Exhibit B.

[42] EA's Testimony.

[43] *See* Note 38, *supra.*

[44] *Id.*

[45] Division's Brief at 3. *See* Note 20, *supra.*

[46] *See* Note 23, *supra. See also* Notes 19-22, *supra.*

[47] *Id.*

The Protestant replies, "The 'mailbox rule' applies here – since it was put in the mail, it was presumed that it got where it needed to go within a reasonable time."[48] Unfortunately, the "mailbox rule"[49] does apply in this matter. Section 2373 of Title 68 is a "…legislatively crafted outer limit time boundary beyond which taxpayers' right to recover a refund no longer exists."[50]

As in *Neer*,[51] the Protestant had available adequate avenues by which the Protestant could have protected his ability to obtain his refund for the 2009 Tax Year, but the Protestant chose not to avail himself of such avenues.

First, like the majority of taxpayers, the Protestant could have claimed the tax credit for investments in "qualified electric motor vehicle property"[52] on his Original Return for the 2009 Tax Year, which would have acted as a "protective claim." Instead, the Protestant waited until the Supreme Court of Oklahoma handed down its decision in *Wilder*[53] on May 25, 2012, and thereafter amended his return for the 2009 Tax Year to claim the credit.[54]

Second, the Protestant testified that he instructed his Office Manager to mail the Amended Return for the 2009 Tax Year during December 2012, which the Office Manager testified that she sent out by first class mail.[55] The EA further testified that he was aware of the Tax Commission Rule on the risk of untimeliness,[56] and more specifically the "Documentation to Avoid the Risk of Untimeliness."[57] Instead of mailing by certified mail return receipt requested or using a "Designated Delivery Service,"[58] the Protestant chose to send by first class

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[48] *See* Protestant's Position Letter at 2.

[49] *See* Note 20, *supra.*

[50] *See* Note 23 at ¶ 2. As in *Neer*, none of the statutorily delineated exceptions in Section 2373 applies in this matter. *See also* Note 20.

[51] *Id.*

[52] OKLA. STAT. tit. 68, § 2357.22(C) (West 2008).

[53] *See* Note 12, *supra.*

[54] EA testified that he prepared the Amended Return for the 2009 Tax Year on November 19, 2012. EA's Testimony. *See* Note 9, *supra.*

[55] *See* Note 37, *supra.*

[56] EA's Testimony.

[57] *See* Note 27, *supra.*

[58] *See* Notes 27-28, *supra.*

mail, thereby assuming the risk of untimeliness, and no documentation to support his claim other than self-serving testimony.

Third, the Protestant and EA testified that they were aware of the three (3) year period. Section 2373 of Title 68, provides "In cases where the Tax Commission and the taxpayer have signed a consent, as provided by law, extending the period during which the tax may be assessed, the period during which the taxpayer may file a claim for refund or during which an allowance for a refund may be made shall automatically extended to the final date fixed by such consent plus thirty (30) days."[59]

General principles of equity may not override statutory requirements for timely filing of tax refund claims.[60] 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.[61] The ALJ also notes for the record, that neither the Protestant nor his Representatives called the Division to check on his refund for the 2009 Tax Year until August 28, 2013, well after the three (3) year period had already expired.[62]

CONCLUSION

The Protestant has failed to meet his 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

[59] *See* Note 20, *supra.*
[60] *See* Note 29, *supra.*

[61] *See* Note 30, *supra.*

[62] *See* Note 11, *supra.*

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."