

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2015-06-16-09 / NON-PRECEDENTIAL  
**ID:** P-14-097-K  
**DATE:** JUNE 16, 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 19<sup>TH</sup> day of May, 2015, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED

### FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

NOW on this 19<sup>th</sup> day of May, 2015, the above styled and numbered cause comes on for decision pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. 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 and OTC INTERN, Licensed Legal Intern, Office of the General Counsel, Oklahoma Tax Commission.

### STATEMENT OF THE CASE

On October 12, 2013, Protestants filed a paper Oklahoma Nonresident/Part-Year Income Tax Return for the 2009 tax year claiming an income tax refund of \$357.00. The Division audited the return and by letter dated February 14, 2014, notified Protestants that the refund was barred by statute. Protestants timely protested the refund denial.

On October 2, 2014, the Division referred the protest to the Office of the Administrative Law Judges for the appellate protest procedures mandated by 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-14-097-K and assigned to ALJ, Administrative Law Judge.<sup>3</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).

A pre-hearing teleconference was scheduled for November 25, 2014, by the *Prehearing Teleconference Notice* issued October 6, 2014.<sup>4</sup> By *Request for Continuance*, the conference was cancelled and rescheduled for December 18, 2014. 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* was filed February 19, 2015, with Exhibits A through D attached thereto. By letter dated February 20, 2015, the alternative hearing scheduled for March 19, 2015 was stricken and the parties were advised that the protest would be submitted for decision upon completion of the briefing schedule. By *Status Report* filed March 23, 2015, the Court was notified that Protestants stood by their prior two (2) letters filed in this matter as their brief in chief. The *Division Response Brief* was filed April 13, 2015. Protestants did not file a reply brief. On April 24, 2015, the record was closed and the protest was submitted for decision.<sup>5</sup>

### 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 or about October 12, 2013, Protestants mailed an Oklahoma Nonresident Income Tax Return for tax year 2009 (“2009 Oklahoma Return”) to the OTC. On the 2009 Oklahoma Return, Protestants claimed a refund on line 51 in the amount of \$357.00.

2. On or about February 14, 2014, the Division issued an adjustment letter to Protestants disallowing the refund claimed on the 2009 Oklahoma Return as it was submitted more than three years after the original due date of the return.

3. On or about April 13, 2014, Protestants protested the Division’s disallowance of the refund claimed on line 51 of the 2009 Oklahoma Return.

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<sup>4</sup> OAC 710:1-5-28(a).

<sup>5</sup> OAC 710:1-5-39.

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

4. On or about February 18, 2015, Protestants sent the Division a letter with additional information regarding their protest.
5. Protest is properly before the Administrative Law Judge.

### ISSUE AND CONTENTIONS

The issue presented for decision is whether the 2009 Oklahoma Return claiming an income tax refund was timely filed.

Protestants contend that the 2009 Oklahoma Return was timely filed. In support of this contention, Protestants argue that the deadline for filing the 2009 Oklahoma Return was October 15, 2013, since they did not owe Oklahoma income tax and they filed a federal extension within the time allowed. In the letter of February 18, 2015, Protestants state that they relied on the Oklahoma Tax Commission website in filing the refund claim and argue that the refund should be allowed given that a reasonable person would not understand that the time frame for filing the return is different from the time frame for obtaining a refund.

The Division contends that the decision to bar Protestants' refund claim is proper. In support of this contention, the Division shows that the 2009 Oklahoma Return was filed October 12, 2013, nearly six (6) months past the deadline for filing a refund claim for the 2009 tax year. The Division further argues that the extension of time to file the return did not extend the time to claim the refund, citing *Matlock v. Oklahoma Tax Commission*, 2001 OK CIV APP 104, ¶ 3, 29 P.3d 614, 615 and *OAC 710:50-9-2*. The Division further argues that neither of the two exceptions 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.
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:

§ 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. 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<sup>7</sup>; 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.

7. 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).

8. In all administrative proceedings the burden of proof to show the action or proposed action of the Oklahoma Tax Commission is incorrect, and in what respect is on the taxpayer. OAC 710:1-5-47. See, *Enterprise Management Consultants, Inc. v. State ex rel.*

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<sup>7</sup> Estimated or withheld income taxes are deemed paid on the due date of the return notwithstanding a federal or Oklahoma extension, citing § 216.

*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.

9. Protestants' 2009 income tax refund claim is barred by the provisions of § 2373.

### RECOMMENDATIONS

Based on the above and foregoing findings of fact and conclusions of law, it is recommended 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."