

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2016-01-12-04 / NON-PRECEDENTIAL  
**ID:** P-15-098-K  
**DATE:** JANUARY 12, 2016  
**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 9<sup>th</sup> day of December, 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 9<sup>th</sup> day of December, 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. A *Prehearing Teleconference Notice* (“*Notice*”) was forwarded to PROTESTANT (“Protestant”) at her last known address<sup>1</sup>. Protestant did not respond to the *Notice*. 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

Protestant filed an original paper 2009 Oklahoma Resident Income Tax Return on or about August 8, 2014, claiming an overpayment of \$1,145.00. By automated letter issued September 8, 2014, the Division notified Protestant that the refund/overpayment had been denied since the claim was barred by statute. Protestant timely protested the Division’s action. An oral hearing was not requested in the letter of protest.

On July 16, 2015, 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<sup>2</sup> and the Rules of Practice and Procedure before the Office of

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<sup>1</sup> 68 O.S. 2011, § 208.

<sup>2</sup> 68 O.S. 2011, § 201 et seq., as amended.

Administrative Law Judges<sup>3</sup>. The case was docketed as P-15-098-K and assigned to the undersigned.<sup>4</sup>

A pre-hearing teleconference was scheduled for September 22, 2015, by the *Notice* issued August 3, 2015.<sup>5</sup> Protestant neither appeared at the conference nor responded to the *Notice*. By *Prehearing Conference Order* issued September 22, 2015, the Division was directed to file a verified response to protest on or before October 22, 2015 and Protestant was advised that a reply to the response may be file on or before November 23, 2015. The *Order* further directed that if an oral hearing was not requested, the record would be closed and the protest submitted for decision upon completion of the announced procedural schedule<sup>6</sup>. Protestant did not file a response to the *Order*.

The *Division's Verified Response to Protest* ("*Verified Response*") and Exhibits A through G were filed October 22, 2015. Protestant did not file a reply to the *Verified Response*. On December 1, 2015, the record was closed and the protest was submitted for decision.<sup>7</sup>

### FINDINGS OF FACT

Upon review of the file and records, including the *Verified Response* and attached exhibits, the undersigned finds:

1. The due date for filing an original paper 2009 Oklahoma Resident Income Tax Return made on the basis of the calendar year was April 15, 2010<sup>8</sup>. 68 O.S. Supp. 2007, § 2368(G)(1).
2. Protestant's original paper 2009 Oklahoma Resident Income Tax Return ("2009 Return") was filed on or about August 8, 2014.<sup>9</sup> Exhibit A.
3. The 2009 Return reported an overpayment and refund of \$1,145.00. *Id.*

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<sup>3</sup> Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

<sup>4</sup> *OAC* 710:1-5-22(b).

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

<sup>6</sup> *OAC* 710:1-5-28(b).

<sup>7</sup> *OAC* 710:1-5-39.

<sup>8</sup> April 15, 2010 fell on a Thursday and was not Emancipation Day, a legal holiday in the District of Columbia.

<sup>9</sup> A signature date of August 7, 2014 is reflected on the return.

4. By automated letter issued September 8, 2014, Protestant was notified that the refund/overpayment had been denied since the claim was barred by statute. Exhibit B.
5. Protestant timely protested the Division's notice. Exhibit C.

### ISSUE

The issue presented for decision is whether the Division erred in denying Protestant's 2009 income tax refund?

### 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). Estimated and/or withheld income taxes are deemed paid

on the due date of the return. *Id. See*, 68 O.S. 2011, § 216. "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. A tax year 2009 "paper"<sup>10</sup> income tax return made on the basis of the calendar year was due and the estimated and/or withheld income taxes with respect to that 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 by April 15, 2013. 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. Lueckett*, 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. Protestant's claim to the overpayment of income taxes for the 2009 tax year is barred by the provisions of § 2373 since the return was not filed within three (3) years of the date the taxes were paid.

### RECOMMENDATIONS

Based on the above and foregoing findings of fact and conclusions of law, it is recommended that the protest of Protestant, PROTESTANT be denied.

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<sup>10</sup> Returns not filed electronically.

## 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.”