

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2019-10-29-04 / NON-PRECEDENTIAL
ID: P-18-243-H
DATE: OCTOBER 29, 2019
DISPOSITION: DENIED
TAX TYPE: CORPORATE INCOME
APPEAL: NONE TAKEN

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 Corrected Findings of Fact, Conclusions of Law and Recommendation made and entered by the Administrative Law Judge on the 14th day of October, 2019, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED

CORRECTED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

NOW on this 14th day of October 2019, 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. COMPANY (“Protestant”) appears through Kevin Herzberg, ATTORNEY 1, ATTORNEY 2, and ATTORNEY 3, FIRM. The Compliance Division (“Division”), Oklahoma Tax Commission, appears through AGC 1, Assistant General Counsel, and AGC 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On November 21, 2018, the Office of Administrative Law Judges received the protest file 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 November 21, 2018, the

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

² OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-49.

Court Clerk mailed the Introductory Letter to the Protestant that ALJ, Administrative Law Judge (“ALJ”) had been assigned to this matter, and docketed as Case Number P-18-243-H.

On February 21, 2019, the ALJ issued the Scheduling Order for the parties to submit this matter on Stipulations and Briefs.³ On March 28, 2019, the parties filed Joint Stipulation of Facts, Issue, and Exhibits, with Joint Exhibits 1 through 8. On May 13, 2019, the Protestant filed its Brief-In-Chief. On May 13, 2019, the Division filed its Brief. On May 22, 2019, the Protestant filed its Reply Brief. The ALJ closed the record and submitted this matter for decision.

On September 19, 2019, the Commissioners issued OTC Order No. 2019-09-03-04 remanding this matter to make corrections to the Findings, Conclusions, and Recommendations issued on June 19, 2019.

STATEMENT OF FACTS

1. On September 18, 2015, the Division received Protestant’s consolidated Oklahoma Form 512 Corporation Income Tax Return for tax year 2014 (the “2014 Return”).⁴

2. The 2014 Return showed an overpayment of \$823,872.00 to be credited to estimated tax for tax year 2015.

3. The original filing deadline for Protestant’s 2014 Oklahoma corporate income tax return was March 15, 2015. Since March 15, 2015 fell on a Sunday, the return was due on the next business day, Monday, March 16, 2015.

4. On March 16, 2015, the Protestant filed Oklahoma Form 504, Application for Extension of Time to File an Oklahoma Income Tax Return, requesting an extension to file its

³ OKLA. ADMIN. CODE § 710:1-5-38 (West July 11, 2013).

⁴ The ALJ omits references to Joint Exhibits.

2014 Oklahoma corporate income tax return. Included with the Form 504 was an extension payment of \$40,000.00.

5. Protestant indicated on its Form 504 that an IRS extension of time to file had been granted to September 15, 2015.

6. On January 26, 2017, the Division received Protestant's Amended Oklahoma Form 512 Corporation Income Tax Return for tax year 2014 ("First Amended 2014 Return").

7. The First Amended 2014 Return requested a refund in the amount of \$65,361.00 for a reported overpayment of income tax.

8. In a letter dated February 14, 2017 (the "First 2014 Adjustment Letter"), the Division adjusted the Protestant's refund/overpayment amount, as reported on the First Amended 2014 Return, from \$65,361.00 to \$40,617.00.

9. The Commission issued a standard paper check in the amount of \$40,617.00 to Protestant on February 16, 2017.

10. The Protestant did not protest the First 2014 Adjustment Letter.

11. On September 7, 2018, the Division received Protestant's second Amended Oklahoma Form 512 Corporation Income Tax Return for tax year 2014 (the "Second Amended 2014 Return").

12. The Second Amended 2014 Return requested a refund in the amount of \$210,177.00 for a reported overpayment of income tax.

13. In a letter dated September 12, 2018 (the "Second 2014 Adjustment Letter"), the Division adjusted the Protestant's refund/overpayment in the amount of \$234,921.00.

14. The Second 2014 Adjustment Letter stated “[a]ll or part of your 2014 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.”

15. The Division denied Protestant’s refund of \$234,921.00 in its entirety.

16. There is a difference in the refund amount reported by Protestants [sic] on the Second Amended 2014 Return and the refund amount referenced by the Division in the Second 2014 Adjustment Letter. The change in the refund amount is the result of the Division correcting errors made by Protestant on its Second Amended 2014 Return.

17. The Division received Protestant’s letter (the “Protest Letter”) protesting the Second 2014 Adjustment Letter on November 13, 2018.

18. The Protest Letter was a timely protest to the Second 2014 Adjustment Letter.

19. The Protestant’s protest to the Second 2014 Adjustment Letter is properly before the Administrative Law Judge.

STATEMENT OF ISSUE

Whether the Division properly denied the Protestant’s claim for refund, as requested on the Protestant’s Second Amended 2014 return.

CONCLUSIONS OF LAW

I. JURISDICTION AND BURDEN OF PROOF

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 taxpayer has the burden of proof to show the action or proposed action of the Oklahoma Tax Commission is incorrect, and in what respect. *OAC 710:1-5-47. In re Adway Properties, Inc.*, 2006 OK CIV APP 14, 130 P.3d 302; *Geoffrey, Inc. v. Oklahoma Tax Com’n*,

2006 OK CIV APP 27, 132 P.3d 632. If the taxpayer fails to prove a prima facie case, the protest may be denied solely on the grounds of failure to prove sufficient facts, which would entitle the taxpayer to the requested relief. *OAC 710:1-5-47; Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n*, 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.

3. The burden of proof standard is “preponderance of evidence.” 2 Am.Jur.2d *Administrative Law* § 357. “Preponderance of evidence,” means “[e]vidence which is of greater weight or more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows the fact sought to be proved is more probable than not * * * evidence which is more credible and convincing to the mind * * * that which best accords with reason and probability.” BLACK’S LAW DICTIONARY 1064 (5th ed. 1979). Each element of the claim must be supported by reliable, probative, and substantial evidence of sufficient quality and quantity as to show the existence of the facts supporting the claim are more probable than their nonexistence. 2 Am.Jur.2d *Administrative Law* § 357.

4. An order of the Tax Commission must be supported by substantial evidence. *Dugger v. State ex rel. Oklahoma Tax Com'n*, 1992 OK 105, 834 P.2d 964. Likewise, the audit upon which a portion of the record is formed and order issued, must be supported by substantial evidence. Oklahoma Tax Commission Order No. 2003-07-22-09, 2003 WL 2347117.

An audit is supported by substantial evidence when an evidentiary foundation for the audit has been established. Usually the evidentiary foundation will be established by the records reviewed by the auditor. Where an evidentiary foundation has been established, the taxpayer must prove the action of the Tax Commission in assessing the tax is incorrect, and in what respect. *OAC 710:1-5-47; Enterprise Management Consultants, Inc., supra*. However, where an evidentiary

foundation has not been laid or the records upon which the audit is based establish no basis for assessing a tax, the audit and assessment in the initial instance cannot be sustained as supported by substantial evidence. *Dugger, supra*.

II. OKLAHOMA INCOME TAX ACT

5. “Taxation is an exclusively legislative function that can be exercised only under statutory authority and in the manner specified by statute.” *State, ex rel. Oklahoma Tax Com’n v. Texaco Exploration & Production, Inc.*, 2005 OK 52, ¶ 7, 131 P.3d 705, 707. The Oklahoma Income Tax Act (“Act”) governs the basis for the Division’s action and Protestant’s protest.⁵

6. A tax is imposed on the Oklahoma taxable income⁶ of every corporation doing business within this state or deriving income from sources within this state. 68 O.S. 2011, § 2355(E). Every corporation is required to “make a return for each taxable year stating the taxable income and the adjustments provided in [the Act] to arrive at Oklahoma taxable income.” 68 O.S. 2011, § 2368(E). The returns of calendar year corporations are due by the fifteenth day of March following the close of the taxable year. 68 O.S. 2011, § 2368(G)(3).

7. At the time of transmitting the required return, the taxpayer must remit therewith the tax due under the applicable provisions of the Act. 68 O.S. 2011, § 2375(A). The tax is delinquent if it is not paid by the due date of the return. *Id.* Section 2375(A) explicitly provides: “[f]ailure to pay such tax on or before the date the return is due shall cause the tax to become delinquent.”

⁵ 68 O.S. 2011, § 2351 *et seq.*, as amended.

⁶ “‘Oklahoma taxable income’ means ‘taxable income’ as reported (or as would have been reported by the taxpayer had a return been filed) to the federal government, and in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided.” 68 O.S. 2011, § 2353(12).

8. The Tax Commission may grant a reasonable extension for filing any return required under any state tax law. 68 O.S. 2011, § 216. The extension may not exceed in the aggregate more than one-half the time for which such return must be filed and does not extend the date on which any payment of a state tax is due. *Id.* Section 216 specifically provides: “[a]n extension shall not extend the date for payment of the state income or franchise tax due.”

9. Ignorance of the law, standing alone is no defense. The Court in *Campbell* cites the rule, long-standing and well known,⁷ “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.” It should also be noted it is fundamental that all persons are charged with knowledge of the laws that affect them.⁸

III. INCOME TAX REFUND CLAIMS

10. “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 Com’n*, 1954 OK 266, 283 P.2d 521, 523. “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 Com’n*, 2004 OK 48, ¶ 10, 98 P.3d 1061, 1064, citing *R.R. Tway, Inc. v. Oklahoma Tax Com’n*, 1995 OK 129, 910 P.2d 972, 978.

⁷ *Campbell v. Newman*, 1915 OK 538, ¶ 3, 151 P. 602, 603, citing *Utermehle v. Norment*, 197 U.S. 40, 25 S.Ct. 291, 49 L.Ed. 655 (1905).

⁸ OTC Precedential Order No. 2006-03-23-07 (March 23, 2006). See *Ponder v. Ebey*, 1944 OK 271, 152 P.2d 268.

11. The filing of an income tax return disclosing a refund due by reason of the credits for withholding and/or estimated taxes previously paid constitutes a claim for refund. 68 O.S. 2011, § 2385.10.

12. The refund of state income taxes is governed by § 2373 of the Act, 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.

Regarding § 2373, the Supreme Court of Oklahoma has held:

§ 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.

Neer v. Oklahoma Tax Com'n, 1999 OK 41, ¶ 2, 982 P.2d 1071, 1073, as corrected. The Court also held: “[i]n our view, no inconsistency, ambiguity, or uncertainty exists in relation to the issue before us, and the meaning of these legislative enactments is clear and unmistakable.” *Id.* ¶ 16.

13. The *Neer* Court found that the taxpayers paid the income tax for the 1991 tax year on April 15, 1992, when they filed their individual income tax return. In footnote 5, the Court reviewed the record regarding the tax payment and found: “the attached return seems to show a large portion of the amount was actually transmitted in the form of estimated tax payments at a time earlier than April 15, 1992.” In the same footnote, the Court writes: “[t]hus, the record is sufficient to show taxpayers' acknowledgment that the latest date on which Oklahoma income tax would be deemed paid would be on April 15, 1992” and “[w]e also note OTC does not argue for any earlier payment date based on the apparent pre-April 15, 1992 estimated tax payments.” The

Court held: “[t]axpayers’ refund claim was properly denied because it was filed more than three years after they paid their Oklahoma income tax in April 1992 for tax year 1991.” *Id.* ¶ 2.

14. A statute of repose runs from a date certain, regardless of when a plaintiff may bring a cause of action to successful conclusion. *Neer, supra* ¶ 19.

15. In *Strelecki v. Oklahoma Tax Com’n*, 1993 OK 122, 872 P.2d 910, corrected, the Supreme Court of Oklahoma in the *Corrected Order of Clarification* held:

The legal conclusion as to § 2373 in Part V, D. of our opinion is binding on the appellee in other proceedings on refund claims of taxpayers who gave notice of an overpayment and claim for refund of income taxes reported and paid during the three years immediately preceding the date of the notice thereof to the OTC. That is, the refund provisions of § 2373 provide a remedy for the six taxpayers who are parties hereto and to any other taxpayer who reported and paid income taxes on federal civil service and military retirement income for the 1985 tax year and gave notice of the overpayment and claim for refund before the expiration of three years from the report date for the 1985 tax year or three years from April 15, 1986; for the 1986 tax year if notice of claim was submitted on or before April 15, 1990; and for the 1987 tax year if the notice of claim was submitted on or before April 15, 1991. *Id.*, at 923-924, citation omitted. (Emphasis added.)

16. The Court of Civil Appeals of Oklahoma, Division No. 1 has also analyzed § 2373 in regard to when the three-year limitation period begins to run. *Matlock v. State ex rel. Okl. Tax Com’n*, 2001 OK CIV APP 104, 29 P.3d 614. There taxpayers contended that the time to file their income tax return was extended, and the three-year limitation ran from the extended date. In disagreeing with taxpayers’ contentions, the Court held: “[p]ursuant to the teachings of *Neer*, the extension of time granted [taxpayers] did not extend the provisions of § 2373” and “[taxpayers] did not file a refund claim until April 30, 1997, fifteen days after the deadline mandated in § 2373.” *Id.* ¶ 3.

17. Rules promulgated pursuant to the provisions of the Administrative Procedures Act are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. § 306(C). *OAC 710:50-9-2* provides that the three-year period during which taxpayers may claim refunds begins on the original due date of the tax return. *OAC 710:50-9-2* mirrors 68 O.S. § 2373 and is not beyond the scope of authority granted to the OTC. *Matlock, supra* ¶ 4, *see also* OTC Order No. 2019-05-02-04, Conclusion of Law No. 8.

18. 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 be automatically extended to the final date fixed by such consent plus thirty (30) days. 68 O.S. 2011, § 2373.⁹

IV. STATUTORY CONSTRUCTION AND OPERATION

19. “When reviewing tax statutes, just as with other statutes, a court’s goal is to ascertain legislative intent and effectuate that intent.” *Neer, supra* ¶ 15, *citing Wilson v. State ex rel. Oklahoma Tax Com’n*, 1979 OK 62, 594 P.2d 1210, 1212 and *Affiliated Management Corp. v. Oklahoma Tax Commission*, 1977 OK 183, 570 P.2d 335, 337. “To ascertain intent, one should look to the language of the pertinent statute(s) and presume the legislative body intends what it expresses.” *Id.*

20. “A cardinal precept of statutory construction is that where a statute’s language is plain and unambiguous, and the meaning clear and unmistakable, no justification exists for the use of interpretative devices to fabricate a different meaning.” *Neer, supra* ¶ 16, *citing In re*

⁹ See OKLA. STAT. ANN. tit. 68, § 223(B) (West 2014). *See also* OTC Order No. 88-11-10-05 (Precedential).

Guardianship of Campbell, 1966 OK 99, 450 P.2d 203, 205.” “Further, terms in a statute are given their plain and ordinary meaning, except when a contrary intention plainly appears [*Id.*] and the words of a statute should generally be assumed to be used by the law-making body as having the same meaning as that attributed in ordinary and usual parlance.” *Id.*, citing *Matter of Income Tax Protest of Ashland Exploration, Inc.*, 1988 OK 23, 751 P.2d 1070, 1073. “Where neither ambiguity or [*sic*] doubt exists, even the rule that weight is to be given to an administrative construction is inapplicable -i.e. administrative construction cannot override plain statutory language.” *Id.*, citing *C.H Leavell & Co. v. Oklahoma Tax Commission*, 1968 OK 127, 450 P.2d 211, 215. “Finally, the rule that tax statutes are to be construed in favor of the taxpayer does not apply if the statute(s) at issue contain no inconsistent provisions, no ambiguities, and no uncertainties.” *Id.*, citing *Exxon Corp. v. Oklahoma Tax Com’n*, 1993 OK CIV APP 178, 873 P.2d 306, 309.

21. “Judicial construction of a statute and longstanding acquiescence therein serves to give such judicial construction the effect of legislation.” *Arkansas Louisiana Gas Co. v. Travis*, 1984 OK 33, 682 P.2d 225, 227.” The interpretation of a statute by the highest courts of a state by which the statute was enacted is generally regarded as an integral part of the statute.” *Id.*

22. “Although the principle is harsh, there is no room for equitable considerations in the administration of tax laws.” *Duncan Medical Services v. State of Oklahoma ex rel. Oklahoma Tax Com’n*, 1994 OK 91, 911 P.2d 247, 250, citing *Western Auto Supply Co. v. Oklahoma Tax Commission*, 1958 OK 144, 328 P.2d 414, 420. General principles of equity may not override statutory requirements for timely filing of tax refund claims. Oklahoma Tax Commission Order No. 2006-03-23-07 (Prec.). See, *Republic Petroleum Corp. v. U.S.*, 613 F.2d 518, 527 (5th Cir. 1980). The levying of taxes is purely statutory, and tax statutes must be administered as written.

Western Auto, supra ¶ 15. It is well settled, however that equitable defenses will not block the requirements of mandatory procedural tax statutes.¹⁰

ANALYSIS

Protestant contends that the phrase “tax paid” in § 2373 concerning corporate income taxpayers is susceptible to more than one reasonable interpretation. Protestant argues: (1) the phrase “tax paid” is not defined, and (2) corporate taxpayers make several payments throughout the year to satisfy the income tax due.

First, Protestant admits that § 2373 applies to its claim for refund; otherwise, there would be no mechanism for the refund of corporate income taxes. *See*, 68 O.S. 2011, § 227.¹¹ Second, § 2373 makes no distinction between corporate and other Oklahoma income taxpayers. Third, all Oklahoma income taxpayers make several payments throughout the year whether by withholding or estimated payments to satisfy the income tax due. *See*, 68 O.S. 2011, § 2385.1 *et seq.*¹²

In Oklahoma, the meaning of the phrase “tax paid” in § 2373 is a settled point of law. Although not explicitly defined, the meaning of “tax paid” is implicit. It means the amount withheld or paid in respect of the taxable year on or before the due date of the income tax return.

As provided in § 2375(A), the taxpayer must remit the tax due at the time of transmitting the return and the tax is delinquent if it is not paid by the due date of the return. “Delinquent” is

¹⁰ *Apache Corp. v. State, ex rel. Oklahoma Tax Com’n*, 2004 OK 48, 98 P.3d 1061, 1064; *R.R. Tway, Inc. v. Oklahoma Tax Com’n*, 1995 OK 129, 910 P.2d 972, 978; *Whig Syndicate, Inc. v. Keyes*, 1992 OK 95, 836 P.2d 1283, 1288.

¹¹ This is the general provision in the revenue laws of Oklahoma permitting suit for recovery of erroneously paid taxes. However, § 227(f) specifically provides that the section does not apply to refunds of income tax erroneously paid.

¹² The provisions of the Oklahoma revenue laws mandating withholding tax, § 2385.2 and estimated tax, § 2385.7.

defined as “being overdue in payment” by *Merriam-Webster’s New Collegiate Dictionary* 336 (9th ed. 1983), and as “due and unpaid at the time appointed by law or fixed by contract” by BLACK’S LAW DICTIONARY 385 (5th ed. 1979). In § 2385.10, filing an income tax return disclosing a refund due because of the credits for withholding and/or paid constitutes a claim for refund. In addition, in § 216 an extension does not extend the date on which payment of the income tax is due.

The Tax Commission on a longstanding, consistent and continuous basis in both individual; Oklahoma Tax Commission Order No. 91-06-06-004 (Precedential), 1991 WL 540484, and corporate, Oklahoma Tax Commission Order No. 2003-02-06-005, 2003 WL 23303787, individual proceedings has held that an income tax claim for refund filed more than three years subsequent to the date the taxes subject to the claim were deemed paid is barred notwithstanding the granting of an extension to file the return. OTC Order No. 2003-02-06-005 *cites* OTC Order Nos, 2000-09-19-041, 92-12-29-024 and 92-03-26-033 for this proposition. OTC Order No. 91-06-06-004 *cites* Rule 23.010.01, eff. June 30, 1990, the genesis of which is not known. Rule 23.010.01 is now codified as *OAC* 710:50-9-2.

The Oklahoma appellate courts have considered the issue of when income tax is deemed paid, notwithstanding Protestant’s argument to the contrary. The *Neer* Court in footnote 5 express a tacit understanding that income tax is deemed paid on the due date of the income tax return when they wrote “the record is sufficient to show taxpayers’ acknowledgment that the latest date on which Oklahoma income tax would be deemed paid would be on April 15, 1992” and the “OTC does not argue for any earlier payment date based on the apparent pre-April 15, 1992 estimated tax payments.”

Protestant argues that based on the statements of the *Neer* Court in footnote 5, “it is reasonable to conclude that the Court * * * would have entertained an argument by the OTC that

the taxpayers' estimated payments could have established a deemed paid date other than the original due date of the return." The ALJ disagrees. These statements show an understanding that the estimate payments were actually paid prior to April 15, 1992, but were deemed paid on April 15, 1992, and there were no arguments to the contrary. The Court ultimately held: "taxpayers' refund claim was properly denied because it was filed more than three years after they paid their Oklahoma income tax in April 1992 for tax year 1991." *Id.* ¶ 2.

In *Strelecki, supra* at 924, the Court in the *Corrected Order of Clarification* held that the refund provisions of § 2373 provide a remedy for any taxpayer who reported and paid income taxes for the 1985 tax year and gave notice of the overpayment and claim for refund before the expiration of three years from the report date for the 1985 tax year or three years from April 15, 1986; for the 1986 tax year if notice of claim was submitted on or before April 15, 1990; and for the 1987 tax year if the notice of claim was submitted on or before April 15, 1991.

The *Matlock* Court specifically addressed Protestant's arguments. *Matlock, supra* ¶ 3 and ¶ 5. Protestant argues that *Matlock* is distinguishable because it involved individual income tax and the application of *OAC 710:50-9-2*. Again, § 2373 makes no distinction between corporate and other Oklahoma income taxpayers. The Court in *Matlock* held that an extension of time to file an income tax return does not extend § 2373 and the deadline mandated in § 2373 is the due date of the return. *Id.* ¶ 3. The Court also held that the fact money is placed on deposit to be used for future taxes does not result in an implied or constructive trust, finding there was no showing of wrongdoing by the OTC, rather the taxpayers did not timely file their refund claim, *Id.* ¶ 5. The issue regarding *OAC 710:50-9-2* was whether the OTC acted beyond the scope of its authority in adopting the rule. The Court held: "it is evident that Rule 710:50-9-2 mirrors § 2373 and the Oklahoma Supreme Court's interpretation of § 2373 in *Neer, supra*." *Matlock, supra* ¶ 4.

The due date for Protestant's income tax return for the 2014 Tax Year was March 15, 2015. 68 O.S. 2011, § 2368(G)(3). Protestant filed the refund claim on September 7, 2018, past the deadline of March 15, 2018 mandated in § 2373. "The refund claim is extinguished. *Matlock, supra* ¶ 3."

CONCLUSION

The Protestant has failed to meet its burden of proof, by preponderance of the evidence, that the Division's denial of the refund for the 2014 Tax Year is incorrect, and in what respect.

RECOMMENDATIONS

The ALJ recommends denying the protest, as set forth.

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 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002).