JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2007-06-26-05 (NON-PRECEDENTIAL)
ID:	CR-07-006-K
DATE:	JUNE 26, 2007
DISPOSITION:	DENIED
TAX TYPE:	CLAIM FOR REFUND
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant, CLAIMANT, appears pro se. The Credits and Refunds Section of the Account Maintenance Division of the Tax Commission ("Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel of the Oklahoma Tax Commission.

STATEMENT OF THE CASE

On or about October 27, 2006, Claimant filed a request for refund of payments purportedly paid to the Tax Commission for Claimant to attend the SADDLEMAKING SCHOOL in SMALL TOWN, Oklahoma and enclosed copies of seven (7) money orders totaling $275.00. Upon review of the system records of the Commission and the documentation submitted with the refund request, the Division was unable to verify that such payments were made to the Tax Commission, and by letter dated November 17, 2006, requested that Claimant provide "[c]opies of the front side of the money orders showing the payee's name". By letter dated November 17, 2006, Claimant responded to the Division's request by stating that he had contacted the Traveler's Express Company, Inc., or MoneyGram, that they have records of the Serial numbers and that they acknowledged the money orders were processed through the Oklahoma Tax Commission. By letter dated December 29, 2006, the Division advised Claimant that in order to approve the refund, the documentation requested in the letter of November 17, 2006 would have to be submitted for review. By letter date stamped January 5, 2007, Claimant replied to the request stating that the copies of the money orders previously supplied was all the documentation he felt was necessary to process the refund claim. The Division by letter dated March 2, 2007, denied the refund claim as a result of the failure of Claimant to supply the requested documentation. Claimant responded to the denial by letter dated March 5, 2007, wherein he states that "you have received sufficient documentation in order to process my refund".

On March 26, 2007, the Division referred the protest to the denial of the refund claim to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[2]. The protest was docketed as Case No. CR-07-006-K and assigned to ALJ, Administrative Law Judge.[3]

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[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[3] *OAC*, 710:1-5-22(b).

A hearing was scheduled for April 26, 2007, by *Notice of Hearing* issued March 29, 2007.[4] A closed hearing was held as scheduled.[5] Claimant did not appear at the hearing, but responded to the notice by two separate letters, dated March 3, 2007 and April 18, 2007.[6] The Division called one witness, AUDITOR, Auditor I, who testified regarding the records of the Division. Exhibits A through F were identified by the witness, offered and admitted into evidence. Upon conclusion of the Division case, the record was closed and the protest was submitted for decision.[7]

FINDINGS OF FACT

Upon review of the file and records, including the recording of the hearing, the exhibits received into evidence and the pleadings of the parties, the undersigned finds:

1. On or about October 27, 2006, Claimant requested a refund in the amount of $275.00, which according to Claimant were funds paid to the Tax Commission for purposes of attending the SADDLEMAKING SCHOOL in SMALL TOWN, Oklahoma. Exhibit B. Enclosed with the refund request were copies of the reverse side of seven (7) money orders showing dates of payment from September 2, 2005 through November 10, 2005 and amounts of payment of either $25.00 or $50.00. Exhibit A.

2. By letter dated November 17, 2006, the Division acknowledged receipt of the refund request and advised that after a review of the provided documentation and the Commission's system records, it was unable to process the request without copies of the front side of the money orders showing the payee's name. Exhibit C. For the convenience of the Claimant, the Division also enclosed a money order claim card for MoneyGRam, (Travelers Express Company). Exhibit C.

3. By letter date stamped January 5, 2007, Claimant wrote:

> I supplied you with copies of the money order receipts, which shouldn't have been necessary, this is all the documentation I feel is necessary for this refund request, and would appreciate this request be completed as soon as possible.

4. The Division by letter dated March 2, 2007, denied the refund request for the reason that Claimant had not provided the additional documentation requested in the letters of November 17, 2006 and December 29, 2006 to substantiate payment of the funds to the Tax Commission. Exhibit E.

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[4] 68 O.S. 2001, § 227(e) and *OAC*, 710:1-5-29.

[5] 68 O.S. Supp. 2005, § 205.

[6] In the letter dated March 3, 2007, Claimant indicates that he will not attend the hearing since he is a resident of North Carolina.

[7] OAC, 710:1-5-39(a).

5. In response to the refund denial, Claimant by letter dated March 5, 2007 wrote that "you have received sufficient documentation in order to process my refund". Exhibit F.

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 Tax Commission. 68 O.S. 2001, § 227(e).

2. "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." *OAC*, 710:1-5-47. *See*, ***Enterprise Management Consultants, Inc. v. State ex rel. 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. The difficulty of ascertaining where the truth lies makes it appropriate to place the burden of proof on the proponent of an issue. ***Cooper v. Oklahoma***, 517 U.S. 348, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996).

3. The general burden of proof standard in administrative proceedings is "preponderance of evidence." 2 Am.Jur.2d *Administrative Law* § 357. *See*, Oklahoma Tax Commission Order No. 91-10-17-061. "Preponderance of evidence" means "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). It is also defined to mean "evidence which is more credible and convincing to the mind * * * [T]hat which best accords with reason and probability." *Id.*

4. Here, Claimant failed to come forward with sufficient evidence to show the funds at issue were paid to the Tax Commission. Accordingly, Claimant's protest to the denial of his refund request should be and the same is hereby denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ordered that the protest to the denial of the refund request of Claimant, CLAIMANT, 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.