

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-06-10-06 / NON-PRECEDENTIAL
ID: P-86-006 / P-86-007 / P-86-008
DATE: JUNE 10, 1986
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cases come on for consideration before ALJ, Presiding Administrative Law Judge, pursuant to assignment regularly made by the Oklahoma Tax Commission, and hearing had, at which hearing, all three Protestants appeared in person, and by Attorney, ATTORNEY, and the Income Tax Division appeared by Attorney, OTC ATTORNEY.

Testimony of witnesses was taken and exhibits not herein itemized were received into evidence. The Attorneys for each side presented facts and arguments in support of their respective positions; and upon submission of proposed Findings of Fact and Conclusions of Law, the cases were submitted to the undersigned for a proposed decision to the Commission.

STATEMENT OF FACTS

All of the Protestants are members of TRIBE A of Indians, a federally recognized Tribe. Protestant, PROTESTANT ONE (P-86-006), is an employee of Indian Health Service, United States Department of Health and Human Services (I.H.S.), and his place of employment is located on land leased by I.H.S. from TRIBE A—TRIBE B—TRIBE C Tribes. The other Protestants are all employees of TRIBE A and work at the Tribal Complex located in CITY, Oklahoma.

The Tribal Complex is situated on land acquired by the Tribe pursuant to Pub.L. 93-134 and is held in trust by the United States for the Tribe. All of the Protestants live in COUNTY, Oklahoma, on individual allotments made to their ancestors, and the allotments are held in trust by the United States for the Protestants. These allotments are not contiguous but are dispersed throughout the county.

During their school years, Protestants attended the public schools within the county and now use the state highways and roads going to and from their places of employment. Protestants' earnings are subject to federal income taxes. As members of TRIBE A, Protestants are eligible to receive services offered by the Tribe and to participate in federal programs administered by the Tribe.

State income taxes are withheld from the Protestant, PROTESTANT ONE (P-86-006), by I.H.S., and until 1984, the Tribe withheld state income taxes from the wages of the other Protestants. In 1984, the Tribe unilaterally decided to discontinue withholding state income taxes from its employees who were members of the Tribe.

On December 1, 1985, the Income Tax Division issued proposed assessments to Protestants in the following amounts:

(1) PROTESTANTS ONE (P-86-006);

	<u>1984</u>
Income Tax	\$771.00
Interest to 1-1-86	<u>100.00</u>
TOTAL	\$871.00

(2) PROTESTANT TWO (P-86-007);

	<u>1984</u>
Income Tax	98.00
Interest to 1-1-86	<u>13.00</u>
TOTAL	\$111.00

(3) PROTESTANT THREE (P-86-008);

	<u>1983</u>	<u>1984</u>
Income Tax	\$127.00	\$151.00
Interest to 1-1-86	<u>39.00</u>	<u>20.00</u>
TOTAL	\$166.00	\$171.00

From these proposed assessments, timely protests have been filed. The amounts of the assessments are not in controversy and have been stipulated as correct.

ISSUES AND CONTENTIONS

The sole issue is whether the income of the Protestants herein is subject to the income tax laws of the State of Oklahoma when the Protestants' income is earned on land held in trust for the Tribe and the Protestants reside on individual allotments held in trust for the Protestants.

The Protestants contend that their income is exempt from state taxation and rely on McClanahan v. Arizona Tax Commission, 411 U.S. 164, 93 S.Ct. 1257 (1973) and various treaties to support their position.

The Income Tax Division contends that the Protestants are not "reservation Indians", that McClanahan is not applicable, and relies on Leahy v. State Treasurer of Oklahoma, 297 U.S. 420, 56 S.Ct. 507 (1936); United States v. Hester, 137 F.2d 145 (10th Cir. 1943); and Oklahoma Tax Commission v. United States, 319 U.S. 598, 63 S.Ct. 1284 (1943) to support its position.

APPLICABLE LAW

Fifty years ago the United States Supreme Court held that Oklahoma's income tax laws were applicable to the income of Indians in this State. Leahy v. State Treasurer of Oklahoma,

supra. Since that time, the Circuit Court of Appeals for the Tenth Circuit has held that the property of Indian citizens of Oklahoma is subject to taxation in the same manner as the property of other citizens on the State unless exempt by federal law. United States v. Hester, supra.

In Oklahoma Tax Commission v. United States, supra, the United States Supreme Court noted that Indian income was subject to federal taxes and stated that Congress did not intend to exempt that income by implication from a similar state tax.

Protestants contend that McClanahan v. Arizona Tax Commission, supra, controls in these protests. However, it must be remembered that the Supreme Court emphasized in that case that the decision was applicable to reservation Indians. Reservation status is “a condition which has not existed for many years in the State of Oklahoma.” Oklahoma Tax Commission, supra, 319 U.S., at 602, and that “[t]he underlying principles on which [reservation status] decisions are based do not fit the situation of the Oklahoma Indian.” Id., at 603.

It is clear from the above citations that Protestants are subject to the tax laws of this State and are not in the same classification as the taxpayer in McClanahan, supra, who was deemed to be exempt from the state’s income tax laws.

CONCLUSIONS

In view of the above and foregoing findings of fact and law applicable thereto, the undersigned concludes as follows:

- (1) The Oklahoma Tax Commission has jurisdiction in this matter.
- (2) The Protestants’ income is not exempt from State taxation under McClanahan v. Arizona Tax Commission, supra.
- (3) The amounts assessed against the Protestants for income taxes are correct and in accordance with law.
- (4) The income tax protests of Protestants herein should be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protests herein be denied, and that each Protestant be required to pay the amount of taxes assessed, plus interest, from due date until paid.

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.