

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-09-03-02 / NON-PRECEDENTIAL
ID: P-86-137
DATE: SEPTEMBER 3, 1986
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration before ALJ, Presiding Administrative Law Judge, pursuant to assignment regularly made by the Oklahoma Tax Commission. Hearing was had, at which hearing, Protestant was represented by ATTORNEY, Attorney, and the Income Tax Division was represented by OTC ATTORNEY, Attorney.

Exhibits, not herein itemized, were admitted into evidence. Closing arguments were made and the case was submitted for a proposed decision.

STATEMENT OF FACTS

Protestant filed amended Oklahoma Income Tax Returns for the years 1982, 1983 and 1984, in which she claimed her income to be exempt from state income tax. The refunds, denied by the Division, were requested in the following amounts:

1982	\$ 85.00
1983	\$157.00
1984	\$173.37

Protestant’s employer is the INDIAN TRIBE ONE of Oklahoma. Among the documents presented in support of Protestant’s claim is a copy of her Certificate of Degree of Indian Blood (CDIB) issued by the Bureau of Indian Affairs which shows Protestant to be 1/32 degree INDIAN TRIBE TWO Indian blood. No evidence that Protestant is a member of the INDIAN TRIBE TWO has been submitted, although counsel for Protestant asserted during argument that Protestant was a Tribal member.

ISSUES AND CONTENTIONS

The sole issue is whether a citizen of Oklahoma who is a 1/32 INDIAN TRIBE TWO Indian and is employed by the INDIAN TRIBE ONE is exempt from paying Oklahoma income tax.

Protestant contends that her income is exempt form state taxation and relies on McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973) to support her position.

The Division contends that Protestant is not a “reservation Indian,” that McClanahan, supra, is not applicable and relies on United States v. Oklahoma Gas & Electric Co., 318 U.S.

206 (1943); Leahy v. State Treasurer of Oklahoma, 297 U.S. 420 (1936); and Oklahoma Tax Commission v. United States, 319 U.S. 598 (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. See Leahy v. State Treasurer of Oklahoma, 297 U.S. 420 (1936). 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 of the State unless exempt by Federal law. United States v. Hester, 137 F.2d 145 (10th Cir. 1943). In Oklahoma Tax Commission v. United States, 319 U.S. 598 (1943), 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.

Protestant contends that McClanahan controls herein. The facts in McClanahan, however, are distinguishable from the facts involved in this protest. Ms. McClanahan was an enrolled Navajo Indian who lived and worked on a Navajo reservation. Protestant is of 1/32 INDIAN TRIBE TWO Indian and works on INDIAN TRIBE ONE land which has lost its status as a reservation. See United States v. Oklahoma Gas & Electric Co., 318 U.S. 206 (1943).

The Division alleges that it is questionable whether Protestant, a 1/32 degree INDIAN TRIBE TWO, can be considered an Indian for jurisdictional purposes and cites the Oklahoma Court of Criminal Appeals case of Goforth v. State, 644 P.2d 114 (Okla. Cr. 1982) which set forth the test of determining whether or not a person was an Indian under Federal law. At page 116, the Court stated:

“Two elements must be satisfied before it can be found that the appellant is an Indian under federal law. Initially, it must appear that he has a significant percentage of Indian blood. Secondly, the appellant must be recognized as an Indian either by the federal government or by some tribe or society of Indians. United States v. Rogers, 45 U.S. (4 How.) 567, 11 L.Ed. 1105 (1846). See also, United States v. Dodge, 538 F.2d 770, 786 (8th Cir. 1976); Makah Indian Tribe v. Clallam County, 73 Wash. 2d 667, 440 P.2d 442 (1968); F. Cohen, Handbook of Federal Indian Law 2 (1942).”

Whether Protestant can be considered a INDIAN TRIBE TWO Indian is not too relevant, however, since the United States Supreme Court in Washington v. Confederated Tribes of Colville, 447 U.S. 134 (1980), upheld a state's authority to impose its taxes on Indians not members of the tribe on whose reservation they were living. In Colville, the Court stated that “for the most practical purposes those Indians stand on the same footing as non-Indian residents on the reservation.”

It is clear that non-member Indians living on reservations are subject to the State's tax laws. Protestant has a small percentage of INDIAN TRIBE TWO blood and is employed by the INDIAN TRIBE ONE. Her status with the INDIAN TRIBE ONE is the same as any other non-

INDIAN TRIBE ONE employee, and her tax liability to pay State income tax is the same as any other Oklahoma resident.

CONCLUSIONS

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

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That Protestant's income is not exempt from Oklahoma income tax under McClanahan, supra, because Protestant, a 1/32 INDIAN TRIBE TWO Indian, is living and working on INDIAN TRIBE ONE land and, therefore, has the same taxable status under Colville, as any other Oklahoma citizen working and living on INDIAN TRIBE ONE land.
- (3) That the amounts assessed against the Protestant for income taxes are correct and in accordance with law.
- (4) That the income tax protest and request for refund of Protestant herein should be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the request for refund of Protestant, PROTESTANT, 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.