JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-01-30-004 / NOT PRECEDENTIAL**
ID: **N9600129 / N9800017 / N9900038**
DATE: **01-30-01**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Claimant is a member of the Choctaw Tribe.

Case No. N-96-129

2. Claimant received income from employment by the Choctaw Nation of Oklahoma for tax years 1989 through 1994 ("tribal income") and reported and remitted income tax to the State of Oklahoma on such income.

3. CLAIMANT and SPOUSE filed amended joint income tax returns for tax years 1989 through 1991; CLAIMANT filed an amended income tax return for tax year 1992; and CLAIMANT and SPOUSE filed amended income tax returns for tax years 1993 and 1994. Each year a refund of taxes remitted on his tribal income was claimed, in the following amounts:

1989	$414.00
1990	$490.00
1991	$936.00
1992	$727.00
1993	$939.00
1994	$893.00

4. By letters dated April 26, 1996, the Audit Division denied Claimant's refund requests for the reason that he failed to submit evidence that his employment or residence is on Indian country.

5. By letter dated May 8, 1996, Claimant protested the Division's denial.

Case No. N-98-017

6. Claimant received income from employment by the Choctaw Nation of Oklahoma for tax years 1995 and 1996 and reported and remitted income tax to the State of Oklahoma on such income.

7. Claimant filed income tax returns for tax years 1995 and 1996 excluding his tribal income. The refunds claimed on the 1995 and 1996 returns are $1,352.00 and $1,091.00, respectively.

8. By letters dated January 30, 1998, the Audit Division disallowed Claimant's exclusions for tribal income for 1995 and 1996 for not meeting all the requirements and issued proposed assessments of additional income tax for those years.

9. For the 1995 tax year the amount in controversy is $2,035.76, consisting of $1,604.00 tax and interest through January 30, 1998, in the amount of $431.76. For the 1996 tax year the amount in controversy is $1,787.33, consisting of $1,597.00 tax and interest through January 30, 1998, in the amount of $190.33.

10. By letter dated February 19, 1998, Claimant protested the Division's denial.

Case No. N-99-038

11. Claimant received income from employment by the Choctaw Nation of Oklahoma for tax years 1997 and 1998 and reported and remitted income tax to the State of Oklahoma on such income.

12. CLAIMANT and SPOUSE filed income tax returns for tax years 1997 and 1998. CLAIMANT's income was excluded. The refunds claimed on the 1997 and 1998 returns are $783.00 and $1,087.00, respectively.

13. The refunds for 1997 and 1998 were processed automatically without examination, and refund checks issued for the amounts claimed. The Audit Division subsequently notified Claimant that he did not meet all the requirements for the tribal income exclusion, and by letters dated September 15, 1999, proposed to assess CLAIMANT and SPOUSE additional income tax for the 1997 and 1998 tax years.

14. For tax year 1997, the total amount in controversy is $1,145.81, consisting of $873.00 tax, interest through September 15, 1999, in the amount of $185.51, and penalty in the amount of $87.30. For tax year 1998, the total amount in controversy is $1,148.55, consisting of $988.00 tax, interest through September 15, 1999, in the amount of $61.75, and penalty in the amount of $98.80.

15. By letter dated October 8, 1999, Claimant protested the Division's denial and submitted additional documentation.

16. After examining the documentation, the Division responded by letter dated November 5, 1999, advising that Claimant had not sufficiently documented that his employment or residence was on Indian country.

17. A copy of a Warranty Deed dated October 28, 1993, was submitted showing that certain property in Fort Towson was conveyed to CLAIMANT in fee simple without restrictions.

ISSUE

Whether Claimant has met his burden of proving that the income earned, which is the subject of the refund claim, is not taxable by the State of Oklahoma.

CONTENTIONS

Based on documentation submitted in support of his refund claim, Claimant, contends that he is a member of the Choctaw Nation, lives and works on land subject to the jurisdiction of the Choctaw Nation and is not subject to state income taxes.

The Division acknowledges that Claimant has established his tribal membership and that he met the Indian country employment requirements for 1989 through June 21, 1995, but contends that Claimant failed to meet his burden of proof in showing that the Indian country employment requirements were met after June 21, 1995.

Additionally, Division contends that Claimant failed to meet the Indian country residency requirements for all years at issue.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. § 207.

2. Every resident individual having gross income for the taxable year in an amount sufficient to require the filing of a federal income tax return must file an Oklahoma income tax return and remit tax upon the taxable income. 68 O.S. § 2355 and § 2368. A resident individual is a natural person who is domiciled in the state, and any other natural person who spends in the aggregate more than seven (7) months of the taxable year within this state. 68 O.S. § 2353.

3. The established rule of law is that a state is without jurisdiction to subject a tribal member residing and working on Indian country, which is within the jurisdiction of the member's tribe, to a state income tax. *McClanahan v. State Tax Comm. of Arizona*, 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973); *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S.114, 113 S.Ct. 1985, 124 L.Ed.2d 30 (1993); *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 115 S.Ct. 2214, 132 L.Ed.2d 400 (1995). However, Oklahoma may tax the income (including wages from tribal employment) of all persons, Indian and non-Indian alike, residing in the State outside Indian country. *Chickasaw Nation*, 115 S.Ct. at 2217.

4. "Indian country" includes formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States, the Indian titles to which have not been extinguished. 18 U.S.C. §1151; *Sac and Fox*, 508 U.S. at 123. The term "Indian country" does not automatically indicate all land located within the original boundaries of a former or reduced Indian reservation. *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 118 S.Ct. 789, 139 L.Ed.2d 773 (1998).

5. Pursuant to *Oklahoma Administrative Code* 710:1-5-47, the burden of proof in all proceedings, unless otherwise provided by law, is on the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. Claimant has not produced evidence to show that his income was earned on Indian country after June 21, 1995. Additionally, Claimant has not produced evidence to establish for the years at issue that he resided on a formal or informal reservation or an Indian allotment. Neither did Claimant establish he lived in a dependent Indian community.

The term "dependent Indian communities", contained in 18 U.S.C. §1151, refers to a limited category of Indian lands that are neither reservations or allotments, and that satisfy two requirements they must have been set aside by the Federal Government for the use of the Indians as Indian land and they must be under federal superintendence. *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 118 S.Ct. 948, 140 L.Ed.2d 30 (1998). Neither of these requirements is satisfied in this matter.

6. Accordingly, Claimant's income was fully taxable by the State of Oklahoma. The claimed refunds were properly denied, and the deficiency assessments were correctly proposed. Although the requested refunds for 1997 and 1998 were erroneously issued, the making of any refund is not a conclusive finding of the tax due by any individual, but is made subject to the future audit of the return and the determination of the taxpayer's liability. 68 O.S. 1991, § 2385.17.

WAIVER OF INTEREST

The facts of this case demonstrate that Claimant's claim of exclusion was based upon a good faith misunderstanding of the law regarding whether Claimant's income was subject to taxation by the State. Therefore, the interest may be waived by the Commission pursuant to 68 O.S. Supp. 1997, § 220.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the income tax claim for refund of CLAIMANT be denied. It is further DETERMINED that all penalty and interest assessed and accruing be waived by the Tax Commission.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.