JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-04-24-010 / NOT PRECEDENTIAL**
ID: **N9600061**
DATE: **04-24-01**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Claimant is a member of the Cherokee Tribe.

2. Claimant received income from employment by the Cherokee Nation for tax years 1989 through 1991 ("tribal income") and reported and remitted income tax to the State of Oklahoma on such income.

3. Claimant filed amended income tax returns for tax years 1989 through 1991 claiming a refund of taxes remitted on her tribal income.

4. By letter dated April 26, 1996, the Audit Division denied Claimant's refund request for the reason that she failed to submit evidence that her place of employment and her residence is on Indian country.

5. By letter dated May 24, 1996, Claimant protested the Division's denial.

6. During the period in question, Claimant lived within the State of Oklahoma. Claimant did not live on a formal Indian reservation or on tribal lands reserved or set apart by the United States for the use, occupancy or benefit of the Tribe. Claimant did not live on an Indian allotment, either restricted or held in trust by the United States or on lands that had been set aside by the Federal Government for the use of Indians as Indian land, and which were under federal superintendence. Claimant lived in a Mutual Help Home owned by the Housing Authority of the Cherokee Nation of Oklahoma, a state agency created pursuant to 63 O.S. § 1057.

ISSUE

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

CONTENTIONS

Claimant contends that she is a member of the Cherokee Tribe, was employed by the Cherokee Tribe and worked at the Tribal office A from 1981 until April, 1991, and at the Tribal office B for the remainder of 1991 on tribal trust land. Claimant further contends that her residence is located within a dependent Indian community. In support of the contention that she lives in a dependent Indian community, Claimant states that she lives in Sequoyah County; that she did not pay taxes on the land; and that the school that her son attended received impact aide because they lived in Indian housing.

The Division acknowledges that Claimant has established her tribal membership and employment; however, the Division maintains that the remaining requirement for tax exempt status that the tribal member must reside within Indian country has not been satisfied. The Division asserts that Claimant has not established that her residence is located on allotted or trust land or within a dependent Indian community, and that the warranty deed recording a conveyance of the residential property from Claimant to the Housing Authority of the Cherokee Nation showed that the property is not trust or allotted land.

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.

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 failed to meet her burden of proof in that she has not produced any evidence to establish that for 1989 through 1991 her place of residence is on a formal or informal reservation, trust or allotted land. Neither has she shown she lived in a dependent Indian community. The mere fact that property is owned by a tribal housing authority, established pursuant to state law, does not in and of itself establish the property as a dependent Indian community. See *Eaves v. State*, 795 P.2d 1060, *reh den.*, 800 P.2d 251 (Okl.Cr. 1990); see also, *U.S. v. Adair*, 111 F.3d 770 (10th Cir. 1997). 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. The mere provision of education, health, social, welfare and economic programs and services by the Tribe or Federal Government cannot support a finding of Indian country. *Id*. Therefore, Claimant's refund claim for 1989 through 1991 was properly denied.

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.

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.