

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-05-03-015 / NOT PRECEDENTIAL
ID: N9600093
DATE: 05-03-01
DISPOSITION: SUSTAINED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Claimant is a member of the Sac and Fox Nation of Oklahoma.
2. CLAIMANT received income from employment by the Sac and Fox Nation on tribal trust land for tax years 1990 through 1992 ("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 1990 through 1992 claiming a refund of taxes remitted on her tribal income.
4. By letter dated April 26, 1996, the Audit Division denied Claimants' refund request for the reason that she failed to submit evidence of her tribal membership and that her residence is on Indian country. Documentation was subsequently submitted establishing her tribal membership.
5. By letter dated May 22, 1996, Claimants protested the Division's denial.
6. During the claim period, Claimant resided on Sac and Fox Nation tribal trust 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. During the years in question, Claimant both lived and worked in Indian country under the jurisdiction of the tribe of which she is a member. Claimant's wages therefore were not subject to taxation by the State of Oklahoma.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the foregoing protest should be sustained and the above-stated claim for refund should be allowed and paid.

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.