JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-05-23-003 / NOT PRECEDENTIAL**
ID: **N9600141**
DATE: **05-23-01**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. MS. CLAIMANT, is a member of the Choctaw Nation.

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

3. Claimant filed amended joint income tax returns for tax years 1989 through 1994 claiming a refund of taxes in the amounts of $1,103.00, $1,860.00, $3,056.00, $3,395.00, $2,444.00 and $3,648.00, respectively, remitted on her tribal income.

4. By letter dated May 17, 1996, the Division denied Claimants' refund request for the reason that they failed to submit evidence that her residence is on Indian country.

5. By letter dated May 20, 1996, Claimants protested the Division's denial.

6. The Division approved Claimant's request for refund for 1989 through June, 1994, based on documentation that she lived on tribal trust property the grounds of the Choctaw National Indian Hospital.

7. The Division denied the remainder of the claim for July, 1994, through December, 1994, because her current residence at 111 MYSTREET, ANYTOWN, Oklahoma, is not on Indian land.

8. During the period still at issue, Claimant lived in ANYTOWN, Oklahoma, COUNTYONE. ANYTOWN and COUNTYONE are situated within the exterior borders of the original treaty lands of the Choctaw Nation in Oklahoma. The Choctaw Nation, as do other Indian tribes in Oklahoma, administers numerous tribal and federal programs within its "jurisdictional area". The jurisdictional area is essentially coextensive with the exterior boundaries of the Tribe's original treaty lands.

9. Claimant, however, 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 use of Indians as Indian land, and which were under federal superintendence. The property where Claimant resided was owned in fee simple without restrictions.

ISSUE

Whether Claimants have met their burden of proving that the income received by Claimant, 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 and employed by the Choctaw Nation of Oklahoma on Indian country and that she lives in the dependent Indian community of ANYTOWN, Oklahoma. In support of her contention, Claimant states that ANYTOWN has the largest Indian population per capita in Oklahoma; that a majority of people still speak the language; and that the Tribe offers numerous programs which provide a variety of services to members of the Choctaw Nation.

The Division acknowledges that Claimant has established her tribal membership and tribal employment, but contends that Claimant failed to meet the Indian country residency requirement. In support, Division states that the warranty deed recording a conveyance of certain property from MR. SMITH and MS. BROWN to MR. CLAIMANT and MS. CLAIMANT shows no restrictions or trust status. Additionally, Division contends that a large Indian population and tribal programs are not enough to qualify ANYTOWN as a dependent Indian community.

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. Formal Indian reservations have not existed in Oklahoma for many years. For purposes of Section 1151, however, the Supreme Court has recognized "informal" reservations, which include lands held in trust for a tribe by the United States, *Oklahoma Tax Commission v. Citizen Band of Potawatomi Tribe of Okla.*, 498 U.S. 505 (1991), and those portions of a tribe's original reservation which were neither allotted to individual Indians nor ceded to the United States as surplus land, but were retained by the tribe for use as tribal lands. See, *Sac and Fox*, *supra*.

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 argues that she lives within a dependent Indian community. However, 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. Likewise, 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*.

6. Claimant did not live on a formal or informal reservation, within a dependent Indian community or on an Indian allotment. Further, the fact that one's residence is located within what was once part of an Indian tribe's original treaty lands, does not by such fact alone mean that one lives in "Indian country" as that term is defined in 18 U.S.C.§1151. 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).

7. Therefore, Claimant's refund claim for July, 1994, through December, 1994, was properly denied.

DISPOSITION

It WAS DETERMINED based upon the specific facts and circumstances of this case, that the income tax claim for refund of MR. CLAIMANT and MS. 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.