JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-05-24-005 / NOT PRECEDENTIAL**
ID: **N9600110 / N9800012**
DATE: **05-24-01**
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. MS. CLAIMANT received income from employment by the Choctaw Nation for tax years 1989 through 1996 on tribal trust land ("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 $1,086.00, $1,277.00, $1,200.00, $1,363.00, $1,162.00 and $1,090.00, respectively, remitted on her tribal income.

4. By letter dated April 26, 1996, the Division denied Claimant's refund request for tax years 1989 through 1994 for the reason that they failed to submit evidence of her employment or that her place of employment is on Indian country.

5. By letter dated May 3, 1996, Claimants protested the Division's denial for tax years 1989 through 1994.

6. Claimant filed income tax returns for tax years 1995 and 1996 excluding her tribal income.

7. By letters dated January 30, 1998, the Division disallowed Claimant's tribal income exclusions for 1995 and 1996 for not meeting all the requirements for exclusion of tribal income and issued proposed assessments of additional income tax and interest for tax years 1995 and 1996 in the aggregate amounts of $1,171.45 and $1,923.87, respectively.

8. Claimants timely protested the proposed assessments by letter dated February 26, 1998.

9. Claimant submitted a warranty deed dated March 1, 1985, showing the conveyance of residential property in COUNTY ONE to MR. CLAIMANT, SR. and MS. CLAIMANT and a warranty deed dated December 22, 1995, showing a conveyance of residential property in COUNTY TWO to MR. CLAIMANT AND MS. CLAIMANT. The deeds do not show that the properties are trust or allotted land.

10. During a portion of the period Claimant lived in COUNTY ONE and subsequently lived in COUNTY TWO 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.

11. 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 have been set aside by the Federal Government for use of Indians as Indian land, and which were under federal superintendence. Both residential properties were 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 and that she works on land held in trust by the United States government for the benefit of the Choctaw Nation. Additionally, Claimant contends that she lived within the ten and a half counties which comprise the Choctaw Nation; that the Claimant is dependent upon the Choctaw Nation for health care, housing, burial assistance, water and sewer hookups, law enforcement and other services administered by the Tribe; and that the tribe provides these services to all tribal members who live within the jurisdiction of the Tribe.

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. The Division asserts that the warranty deeds submitted for the residential properties do not contain language that the properties are lands held in trust or allotted land and that THE ANONYMOUS AREA has not been set apart for the use, occupancy and protection of dependent Indian people 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.

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 her place of residence is on a formal or informal reservation, trust or allotted land. Neither has she established that she lives 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. 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*. 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). Accordingly, Claimant's income was fully taxable by the State of Oklahoma. The claimed refund was properly denied, and the deficiency assessments were correctly proposed.

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 WAS DETERMINED based upon the specific facts and circumstances of this case, that the protest to the denial of income tax claim for refund of MR. CLAIMANT AND MS. CLAIMANT and the protest to the proposed assessments be denied. It WAS further DETERMINED that all interest assessed or accruing to the date of the Commission's order herein, and for a period of thirty (30) days thereafter should be waived.

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.