JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-07-10-026 / NOT PRECEDENTIAL**
ID: **N0100004**
DATE: **07-10-01**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-named taxpayers protest the proposed assessment of income taxes on wages allegedly earned in "Indian country." Upon consideration of said protest, the files and records of the Oklahoma Tax Commission, and the written submissions and arguments of the parties, the undersigned makes the following findings of fact, conclusions of law, and recommendation as to the final disposition of said protest.

FINDINGS OF FACT

1. Taxpayer is a member of the Choctaw Nation of Oklahoma, a federally-recognized Indian tribe.

2. During the tax year 1997, taxpayer was employed by the Department of XXX of the State of Oklahoma and by XYZ of CITY C, Oklahoma. Taxpayer has provided no evidence as to the location of such employment.

3. At the same time, taxpayer lived in LITTLE TOWN, Oklahoma, which is situated within the exterior boundaries of the original treaty lands of the Choctaw Nation in Oklahoma. However, taxpayer has provided no evidence that his place of residence or his places of employment were located 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. There is no evidence that taxpayer lived or worked 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, under federal superintendence.

4. On taxpayers' original joint income tax return for 1997, taxpayers excluded all of PROTESTANT'S income, claiming such income to be exempt from state taxation. The filed return claimed a resulting refund of $458 taxes withheld from taxpayers' earnings. Without examination or audit of the return, the Tax Commission issued a check for the claimed refund.

5. Later, after examination of taxpayers' return, the Tax Commission's Audit Division disallowed the claimed exclusion of PROTESTANT's income, and recalculated taxpayers' tax liability accordingly. On February 28, 2001, the Division proposed an assessment of the resulting tax deficiency for 1997 in the amount of $823.00, plus penalty in the amount of $82.30 and interest totaling $354.92 through that date. Taxpayers protest.[1]

[1] Taxpayers do not challenge the accuracy of the Division's calculations, only the disallowance of the claimed exclusion.

CONCLUSIONS OF LAW

1. The State is precluded from taxing the income of a member of a federally-recognized Indian tribe who both earns that income and lives within "Indian country" occupied by or subject to the governmental jurisdiction of the member's tribe. *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164 (1973*); Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993); *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U. S. 450, 115 S. Ct. 2214 (1995). Oklahoma, however, 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.

2. As defined by federal law and decisions of the U.S. Supreme Court, "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*.

The term "dependent Indian communities" refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence. *Alaska v. Native Village of Venetie Tribal Government*, ___ U.S. ___, 118 S. Ct. 948 (1998).

3. Taxpayer argues that "federal legislation...designates almost the entire State of Oklahoma as 'Indian Country.' " Taxpayer refers to the "former Indian reservations" in Oklahoma which are eligible for certain federal tax incentives pursuant to the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 1993-3 C.B.1, 146-151, and the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788. However, those Acts deal with federal tax incentives, such as an employer's employment tax credit and an accelerated depreciation allowance, in relation to business activities and investments on Indian reservations and former treaty lands. 26 U.S.C. §§45A and 168(j). Those provisions have no application to the facts of this case. *See generally*, IRS Notice 98-45 (IRB 1998-35, 8/31/98). Further, neither of those Acts purports to affect the definition of "Indian country" contained in 18 U.S.C. §1151. It is that section which sets forth the definition of Indian country that is applied by the courts in delineating state authority over Indians and Indian tribes*, Alaska v. Native Village of Venetie Tribal Government*, 118 S. Ct. 948, 952 (1998), and as comprehended by Congress. *Oklahoma Tax Com'n v. Chickasaw Nation*, 115 S. Ct. 2214, 2217 n.2 (1995). As used in §1151, the term "Indian country" does not automatically include all lands located within the original boundaries of a former or reduced Indian reservation. *See, e.g.*, *South Dakota v. Yankton Sioux Tribe*, 118 S. Ct. 789 (1998).

4. There is no evidence that taxpayer either lived or worked in Indian country as that term is defined and used in 18 U.S.C. § 1151. Accordingly, taxpayer's income was fully taxable by the State of Oklahoma. The proposed assessment was correct. Although the requested refund was 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 PENALTY AND INTEREST

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

DISPOSITION

The foregoing protest should be denied, and the proposed assessment of deficient taxes should be adjudged due and owing. The penalty and interest assessed or accruing to the date of the Commission's order herein, and for a period of 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.