

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-08-21-009 / NOT PRECEDENTIAL
ID: N0100007
DATE: 08-21-01
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 income received from employment in "Indian country." After a hearing, and upon consideration of said protest, the files and records of the Oklahoma Tax Commission, and the evidence adduced in regard hereto, 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 Muscogee (Creek) Nation of Oklahoma, a federally-recognized Indian tribe.
2. During the tax year 2000, taxpayer was employed by the Tribe on tribal trust land. At the same time, taxpayers lived in McIntosh County, Oklahoma, on land that was part of an original Creek allotment. All restrictions to that allotment (as to the surface and one-half of the minerals) were removed in 1962 by order of the United States Department of the Interior. During the tax year in question, the land was owned by taxpayers in fee simple, without restrictions.
3. On taxpayers' original Oklahoma income tax return for that year taxpayers excluded Mrs. PROTESTANT's wages received from the Tribe, claiming such income to be exempt from taxation by the State. The Tax Commission's Audit Division disallowed the exclusion and proposed to assess additional tax against the taxpayers in the amount of \$864.00. Taxpayers protest.

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*, 522 U.S. 520, 118 S. Ct. 948 (1998).

3. During the tax year in question, taxpayers did not live on a formal or informal reservation, within a dependent Indian community, or on a restricted Indian allotment or one held in trust. Although the land had been a restricted allotment at one time, the important consideration in determining whether land is "Indian country" is what the land in question is now, not what it may have been or what it may become. See, *U.S. v. State of South Dakota*, 665 F. 2d 837 (8th Cir. 1981), *cert. denied*, 459 U.S. 823, 103 S. Ct. 52.

4. The restrictions against alienation of the land where taxpayers resided were removed in 1962. Taxpayers did not reside in Indian country. Accordingly, Mrs. PROTESTANT's income was fully taxable by the State of Oklahoma.

DISPOSITION

The foregoing protest should 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.