

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-09-25-008 / NOT PRECEDENTIAL
ID: N0100009
DATE: 09-25-01
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-named taxpayer protests the proposed assessment of income taxes on income received from employment in "Indian country." A hearing was scheduled on said protest, and taxpayer was given notice thereof as provided by law. Taxpayer did not appear. 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 Otoe-Missouria Tribe of Oklahoma, a federally-recognized Indian tribe. During the tax year 1998, taxpayer was employed on lands held in trust for that tribe by the United States.
2. On taxpayer's original Oklahoma income tax return for that year, taxpayer excluded the income from that employment, claiming such income to be exempt from state taxation. The resulting return claimed a refund of all state income taxes withheld from taxpayer's wages. Without examination or audit of the return, the Tax Commission issued a check for the claimed refund.
3. Later, after examination of taxpayer's return, the Tax Commission's Audit Division disallowed the claimed exclusion of taxpayer's income, and recalculated taxpayer's tax liability accordingly. On May 31, 2001, the Division proposed the assessment of the resulting tax deficiency, in the amount of \$436.00, plus interest thereon to that date of \$138.98, and penalty in the amount of \$43.60. Taxpayer protests.
4. During the tax year in question, taxpayer lived in Ponca City, Oklahoma. Taxpayer 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. Taxpayer 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 the use of Indians as Indian land, and which were under federal superintendence.

5. By a tribal resolution adopted May 7, 1997, the Otoe-Missouria Tribe allows "enrolled Tribal members who own tribal land and/or reside within a One Hundred mile radius of the Otoe-Missouria Tribal Complex to participate in it's [sic] Taxation and Registration of Motor Vehicles program." Taxpayer's residence was located within that 100-mile radius.

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, taxpayer did not live on a formal or informal reservation, within a dependent Indian community, or on an Indian allotment. Taxpayer, accordingly, did not live in Indian country.

4. Taxpayer's protest argues that the Tribe's resolution regarding its motor vehicle registration program establishes tribal "jurisdiction" within the described area (which, incidentally, includes portions of trust lands subject to the jurisdiction of approximately 17 other federally-recognized Indian tribes in Oklahoma, plus lands in the State of Kansas),

and that the entire area is, therefore, "Indian country" under the Otoe-Missouria Tribe's jurisdiction. Only Congress, however, can create Indian country, *Alaska v. Native Village of Venetie Tribal Government*, 118 S. Ct. 948 (1998), and a tribe's unilateral efforts to do so have no effect. See, *Buzzard v. Oklahoma Tax Com'n*, 992 F.2d 1073 (10th Cir.), *cert. denied*, 510 U.S. 994, 114 S. Ct. 555 (1993).

5. Since she did not both live on and derive her income from sources within Indian country, taxpayer's income was fully taxable by the State of Oklahoma. The protest should be denied.

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.