

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-01-08-013 / NOT PRECEDENTIAL
ID: N9600075 / N9900037
DATE: 01-08-01
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 30th day of November, 2001, the above-styled and numbered cause comes on for consideration pursuant to 710:1-5-38 of the Oklahoma Administrative Code. Claimants are represent by AN Attorney at Law. The Audit Division is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission. A hearing was held in Case No. N-96-075. At the conclusion of the hearing, this matter was submitted for decision. In response to a motion filed by Protestants, an order was granted consolidating Case No. N-99-037 with the previous case and submitting it for decision.

FINDINGS OF FACT

1. Claimant is a member of the Seminole Nation of Oklahoma.
2. CLAIMANT received income from employment by the Seminole Nation of Oklahoma for tax years 1989 through 1992 and for tax year 1996 ("tribal income") and reported and remitted income tax to the State of Oklahoma on such income.
3. CLAIMANT filed amended income tax returns for tax years 1989 through 1992 claiming a refund of the taxes remitted on his tribal income.
4. By letter dated April 26, 1996, the Audit Division denied Claimant's refund request for the reason that he failed to submit evidence establishing his employment on Indian country or his residence on Indian country.
5. By letter dated May 25, 1996, Claimant protested the Division's denial.
6. On April 15, 1997, CLAIMANT AND SPOUSE filed a joint income tax return for tax year 1996 claiming a refund of taxes remitted on his tribal income, which amount was refunded by the Tax Commission.
7. By letter dated September 15, 1999, the Audit Division assessed Claimants additional income tax for tax year 1996 for the reason that the tribal income exclusion had been disallowed because all requirements had not been met.

8. By letter dated October 29, 1999, Claimants stated the assessment letter was received on October 27, 1999, and protested the Division's denial.

9. Pursuant to a request by the undersigned, Division advised, in regard to the September 15, 1999 assessment, that no copies of return receipt cards or other indication of service exist.

10. Claimant testified at hearing that during the years 1989 through 1992 he lived one and one-quarter (1.25) miles west and one-quarter (.25) miles south of ANONYMOUS, Oklahoma, on land originally allotted to his paternal grandfather.

11. Claimant submitted a letter from the Bureau of Indian Affairs dated September 2, 1997, which provided that the property described IN Seminole County was a part of the original allotment of THE PATERNAL GRANDFATHER, Seminole Indian, roll #XXX. The letter further provided that said property was currently held by the heirs of THE PATERNAL GRANDFATHER in a restricted and tax exempt status.

12. Claimant's Voter Identification Card issued March 25, 1992, was submitted, which indicated an address of 1.25 miles west and .25 miles south of ANONYMOUS, Oklahoma.

13. Claimant's Driver's License, expiration date October, 2001, vehicle registration information for the years 1990, 1991 and 1992, Oklahoma Form 511's for tax years 1989 through 1992 and 1996 and Wage and Tax Statements for 1989, 1990, 1991 and 1996 were submitted, all of which indicate an address of P.O. Box XXX, ANONYMOUS, Oklahoma.

14. A certificate issued April 30, 1991, appointed Claimant to the Seminole Junior College Board of Regents. Claimant stated that it was his belief that residency in Seminole County was a primary requirement of this appointment.

15. Claimant's U.S. Form 1040's for tax years 1989 through 1992 indicate ANOTHER address. At hearing, Claimant explained that this was his sister's address and that he transferred some of his mail to this address before attending school at Yale University and had not changed his mailing address for IRS purposes since his return in 1988.

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

Based on documentation submitted in support of his refund claim, Claimant, contends that he is a Cherokee-Seminole, with membership in the Seminole Nation of Oklahoma, is employed by the Seminole Nation of Oklahoma on trust land, and resides in Indian country.

The Division acknowledges that Claimant has established his tribal membership and tribal employment, but contends that Claimant failed to provide independent verification or documentation substantiating that he meets the Indian country residency requirement.

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. 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 his burden of proof in that he has not produced sufficient evidence to establish that his place of residence is on a formal or informal reservation, trust or allotted land or in a dependent Indian community, and thus does not qualify as Indian country. Therefore, the income tax claim for refund for 1989 through 1992 and for 1996 should be denied.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the income tax claim for refund of PROTESTANTS 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.