

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-03-07-004 / NOT PRECEDENTIAL
ID: N0100029
DATE: 01-08-01
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." A hearing was scheduled on said protest, and taxpayers were given notice thereof as provided by law. Taxpayers 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 Cheyenne-Arapaho Tribes of Oklahoma, a federally-recognized Indian tribe. During the tax years 1996 and 1997, taxpayer was employed by the Tribe on lands held in trust for that tribe by the United States.

2. On their original joint income tax returns for those years, taxpayers excluded the income TAXPAYER received from the Tribe, claiming such income to be exempt from state taxation.

3. During the tax years in question, taxpayers lived in Oklahoma City, Oklahoma. Taxpayers 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. Taxpayers 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.

4. After examination of taxpayers' returns, the Audit Division disallowed the claimed exclusion and recalculated taxpayers tax liability accordingly. On August 16, 1999, the Division proposed an assessment of the resulting tax deficiency for 1996 in the amount of \$1,076.00, plus \$377.19 interest thereon to that date, and \$107.60 penalty. On February 15, 2001, the Division proposed an assessment of deficient tax for 1997 in the amount of \$801.00, plus \$340.43 interest thereon to that date, and \$80.10 penalty. 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 years in question, taxpayers did not live on a formal or informal reservation, within a dependent Indian community, or on an Indian allotment. Taxpayers, accordingly, did not live in Indian country.

4. PROTESTANT's income, therefore, was fully taxable by the State of Oklahoma. The denial of taxpayers' claimed exclusion was correct, and their protest to the proposed assessments for 1996 and 1997 should be denied.

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.