JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-04-09-004 / NOT PRECEDENTIAL**
ID: **N9600102**
DATE: **04-09-02**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 28th day of February, 2002, the above-styled and numbered cause comes on for consideration pursuant to 710:1-5-38 of the Oklahoma Administrative Code. Claimants represent themselves in this matter. The Audit Division is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission. A hearing was held, and upon conclusion of the hearing, this matter was submitted for decision.

FINDINGS OF FACT

1. Claimant is a member of the Seminole Nation. During the years 1989 through 1993, Claimant received income from employment by the Seminole Nation on tribal trust land ("tribal income").

2. Claimants filed amended joint income tax returns for tax years 1989 through 1993 claiming a refund of taxes in the amounts of $173.00, $797.00, $870.00, $806.00 and $613.00, respectively, remitted on his tribal income.

3. By letter dated April 26, 1996, the Division denied Claimants' refund request for the reason that they failed to submit evidence that their residence is on Indian country.

4. By letter dated May 20, 1996, Claimants protested the Division's denial.

5. Claimant submitted a letter dated September 24, 1997, from the Housing Authority of the Seminole Nation, which provides that in 1984 Claimant lived at 999 ANY STREET, Wewoka; that since 1992 he lived at 000 XYZ, Wewoka; and that both units were Mutual Help Homes administered by the Authority.

6. During the time in question, Claimants lived within the State of Oklahoma. Claimants 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. Claimants 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 use of Indians as Indian land, and which were under federal superintendence. Claimants lived in Mutual Help Homes owned by the Housing Authority of the Seminole Nation, a state agency created pursuant to 63 O.S. 1057.

ISSUE

Whether Claimants have met their burden of proving that the income received by Claimant A, which is the subject of the refund claim, is not taxable by the State of Oklahoma.

CONTENTIONS

Claimants contends that CLAIMANT A is a member of and employed by the Seminole Nation, works on land held in trust for the Seminole Nation and that they reside in a dependent Indian community in a Mutual Help Home administered by the Housing Authority of the Seminole Nation, which is validly set apart for use of Indians. In support of the contention that they live in a dependent Indian community, Claimants contend that there are 20 Indian families in the area and eight Mutual Help Homes, that their home at 999 ANY STREET is a block from the Seminole National capitol and is located near the Seminole Museum and the church Claimants attend and that the Bureau of Indian Affairs provides police protection to the Authority.

The Division acknowledges tribal membership and tribal employment have been established, but contends that the Indian country residency requirement has not been met. The Division contends that the residential land was not allotted or trust land and, for the relevant periods, the land was owned by a state agency, the Housing Authority of the Seminole Nation, in fee simple without restrictions. The Division further contends that sufficient evidence was not submitted to establish that the two Mutual Help Homes occupied by Claimants and the Mutual Help project constitute a dependent Indian community.

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. "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", contained in 18 U.S.C.1151, refers to a limited category of Indian lands that are neither reservations or allotments, and that satisfy two requirements they must have been set aside by the Federal Government for the use of the Indians as Indian land and they must be under federal superintendence. Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520, 118 S.Ct. 948, 140 L.Ed.2d 30 (1998).

An Indian housing authority created pursuant to the provisions of the Oklahoma Housing Authorities Act is controlled by the tribe and requires a tribal resolution before it can legally function. 63 O.S. 1981, 1057. However, it is an agency of the State of Oklahoma, and subject to the State's jurisdiction. Housing Authority of the Choctaw Nation v. Craytor, 600 P.2d 314 (Okl. 1979); Eaves v. State, 795 P.2d 1060, reh den., 800 P.2d 251 (Okl.Cr. 1990). Although the housing authority is administered by the Tribe with direction and funding by the federal government (HUD), housing projects and Mutual Help Homes owned and constructed by such Indian housing authorities do not of themselves constitute "dependent Indian communities." U.S. v. Adair, 111 F.3d 770 (10th Cir. 1997). Likewise, the various health, social, educational, welfare and financial programs, to a large degree administered by the Tribe within its own service area, are merely forms of general federal aid; and are not sufficient to support a findings of Indian country. Native Village of Venetie Tribal Government, 118 S.Ct. at 956.

Claimants did not live on a formal or informal reservation, within a dependent Indian community, or on an Indian allotment. The mere fact that one's residence is located within what was once part of an Indian tribe's original treaty lands, does not by such fact alone mean that one lives in "Indian country" as that term is defined in 18 U.S.C. 1151. The term "Indian country" does not automatically indicate all land located within the original boundaries of a former or reduced Indian reservation. South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 118 S.Ct. 789, 139 L.Ed.2d 773 (1998).

5. The income tax claim for refund for 1989 through 1993 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 CLAIMANTS 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.