

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-07-16-006 / NOT PRECEDENTIAL
ID: N9900007
DATE: 07-16-02
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 tax on wages allegedly earned in "Indian country." The parties hereto appear by counsel. The case has been submitted upon the parties' written stipulations of fact, exhibits and legal argument, without oral hearing. Upon consideration thereof, and the files and records of the Oklahoma Tax Commission, 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 Kiowa Indian Tribe of Oklahoma, a federally recognized Indian tribe, and a resident of the State of Oklahoma.

2. On taxpayers' joint Oklahoma income tax return for 1994, taxpayers reported as their total joint Oklahoma and federal adjusted gross income, only the income received during that year by SPOUSE. Taxpayers claimed and received a refund of all state income taxes withheld from SPOUSE's wages.

3. Later, based upon information regularly supplied to the Tax Commission by the Internal Revenue Service, the Commission's Audit Division determined that taxpayers had failed to report or pay taxes on their entire adjusted gross income as reported to the IRS, and recalculated taxpayers' tax liability accordingly. On March 2, 1998, the Audit Division proposed an assessment of the deficiency in the amount of \$764.00 tax, plus interest thereon to that date of \$329.67, and penalty of \$38.20. Taxpayers protest.

4. Taxpayers allege that the unreported income consists of wages earned by PROTESTANT as an employee of the United States Bureau of Indian Affairs at BIA's Anadarko Agency Office in Oklahoma. The Anadarko Agency Office is located on land held in trust by the United States for the Kiowa, Comanche and Apache Tribes of Indians. Taxpayers, however, have submitted no evidence whatsoever as to taxpayer's employment or its location.¹

¹ Accompanying taxpayers' Position Statement and Brief is a "Stipulation of Facts," which is neither verified nor supported by affidavit, nor has it been submitted as an agreed stipulation by the parties. The Audit Division's Position Statement and brief represents that the parties have been unable to arrive at an agreed stipulation of facts.

5. Taxpayers further state in their "stipulations" that taxpayers lived during the tax year in question on a restricted or trust allotment of the Caddo Indian Tribe of Oklahoma. The Hearing Examiner takes judicial notice of the fact that the Caddo Indian Tribe of Oklahoma is another federally recognized Indian tribe. Other than this statement, however, taxpayers have provided no proof of such residency.

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 governed by 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. Informal reservations 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.

3. However, the rule in *McClanahan* does not apply to taxation of nonmembers, even where they are Indians. *Duro v. Reina*, 495 U.S. 676, 686-87 (1990). Income earned by Native Americans while living and working on reservations of tribes of which they are not members is taxable by the State. *New Mexico Taxation and Revenue Dept. v. Greaves*, 864 P.2d 324 (N.M.1993). See also, *LaRock v. Wisconsin Dept. of Revenue*, 621 N.W. 2d 907 (Wis. 2001) (*Duro v. Reina* not overturned in the taxing context by subsequent federal legislation; Indian not exempt from state income tax while living and working on land of tribe of which she was not a member); and *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980) (For most practical purposes, nonmember Indians resident on another tribe's reservation stand on the same footing as non-Indians residing on the reservation.)

4. A protesting taxpayer has the burden of proving that the proposed assessment is erroneous. *Matter of Gross Production and Petroleum Excise Tax Protest of Arkla, Inc.*, 919 P.2d 1151 (Okla App. Div. 3 1996); OAC 710:1-5-47. In this case, although taxpayers allege that PROTESTANT's unreported income was earned on Indian country by a tribal member resident in Indian country, taxpayers have totally failed to prove those allegations other than PROTESTANT's membership in the Kiowa Tribe. The protest should be denied for that reason alone.

5. Secondly, even if those allegations were taken as true, they would show only that taxpayer, while deriving income from Indian country under the jurisdiction of his own tribe, lived in Indian country under the jurisdiction of another tribe - one of which he was not a member. His income, therefore, was fully taxable by the State of Oklahoma. The proposed assessment was correct.

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.