

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-07-16-009 / NOT PRECEDENTIAL  
**ID:** N9700016 / N0100010  
**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 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. During the time here in question, taxpayers lived on an individual Indian trust allotment of the Kiowa Tribe.

2. During the tax years 1995 (Case No. N-97-016) and 1998 (Case No. N-01-010), taxpayer was employed by the Bureau of Indian Affairs at its Anadarko Area Office, on land held in trust by the United States of America for the Wichita and affiliated bands of Indians (Caddo Tribe and the absentee band of Delaware Indians of Caddo County, Oklahoma), also federally recognized Indian tribes.<sup>1</sup>

3. On taxpayer's original joint Oklahoma income tax returns for 1995 and 1998, taxpayers excluded the income received by TAXPAYER from his employment on Indian trust land, claiming such income to be exempt from state taxation. After examination of taxpayers' returns the Commission's Audit Division disallowed the claimed exclusion and, on June 27, 1997, proposed the assessment of additional taxes for 1995 in the amount of \$2,016.00, plus interest thereon to that date of \$362.88. On June 15, 2001, the Division proposed the assessment of additional taxes for 1998 in the amount of \$2,203.00, plus interest to that date of \$715.98, and penalty of \$220.30. Taxpayers protest both assessments.

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The BIA also has an office known as the Anadarko *Agency* Office, which is located on land held in trust for the Kiowa, Comanche and Apache Tribes of Indians. However, although given ample opportunity to do so, taxpayer has provided no evidence that he worked there. To the contrary, his initial protest specifically mentions the *Area* Office. In addition, the auditor's notes submitted in these cases indicate that the auditor contacted the BIA, and was informed that taxpayer was not employed on land that was under the jurisdiction of taxpayer's tribe.

**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. In this case, taxpayer did not derive his income from sources within Indian country under the jurisdiction of the tribe of which he was a member. Although his employer did have an office in Indian country under the jurisdiction of taxpayer's tribe, taxpayer did not work there. Under *McClanahan*, it is the location of the immediate source of income that determines whether that income is exempt from taxation by the state - not the identity of the employer or whether that employer has other branch locations.<sup>2</sup> Taxpayer's income, therefore, was fully taxable by the State of Oklahoma. The proposed assessments were correct.

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<sup>2</sup> In *McClanahan*, the tribal member, a resident on her tribe's reservation, worked for a non-Indian bank at a branch located on the reservation.

**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 protests should be denied and the additional taxes assessed should be adjudged due and owing. All penalty or interest assessed or accruing to the date of the Commission's order herein, and for a period of thirty 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.