

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-07-16-011 / NOT PRECEDENTIAL
ID: N9600208
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 denial of their claims for refund of state income taxes paid on wages earned in "Indian country," and the proposed assessment of additional taxes on such income. The parties hereto appear by counsel. The case has been submitted upon the parties' written stipulations of fact, exhibits and legal arguments, 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. Taxpayers are husband and wife. TAXPAYER is a member of the Otoe-Missouria Tribe of Indians of Oklahoma, a federally recognized Indian tribe. SPOUSE is a member of the Pawnee Nation of Oklahoma¹, another federally recognized Indian tribe.

2. During the tax years in question, both taxpayers were employed by the United States Department of Health and Human Services at the Pawnee Service Unit of the Indian Health Service, on land held in trust by the United States for the Pawnee Nation. At the same time, the taxpayers lived together on part of an original restricted Otoe-Missouria allotment, on land held in trust by the United States for TAXPAYER.

3. On or about April 15, 1994, taxpayers filed amended Oklahoma income tax returns for 1990 and 1993, seeking a refund of Oklahoma income taxes they had paid on the wages they had received from said employment, claiming such income to be exempt from state income tax. Those refund claims were denied by the Commission's Audit Division for the reason that neither taxpayer both lived on and derived his or her income from Indian country under the jurisdiction of the tribe of which he or she was a member.

4. On or about December 29, 1997, taxpayers filed amended Oklahoma income tax returns for the tax years 1991, 1992, 1994, 1995 and 1996, seeking refunds of the taxes they had paid on their employment in Indian country, for the same reason. The Division denied the refund claims for the same reason, and further denied the claims for 1991 and 1992 as being barred by the statute of limitations.

Formerly known as the Pawnee Tribe of Oklahoma.

5. On their original income tax return for 1997, taxpayers excluded the income they had received from their Indian country employment, citing the same reason. The resulting return claimed a refund of all state income taxes withheld from their wages for that year. Without audit or examination of the return, a check was issued for the claimed refund. After examination of the return, the Audit Division disallowed the claimed exclusion of their income, and recalculated taxpayers' income tax liability accordingly. On November 30, 1998, the Division proposed the assessment against taxpayers of additional tax due in the amount of \$3,182.00, plus interest thereon to that date of \$299.46. Taxpayers protest the proposed assessment and the denial of their refund claims.

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, neither taxpayer both lived and worked on Indian country under the jurisdiction of the tribe of which he or she was a member. TAXPAYER, an Otoe-Missouria, lived on Otoe-Missouria Indian country, but was employed and derived his income on Pawnee land. SPOUSE, a Pawnee, was employed and derived her income on Pawnee Indian country, but resided on Otoe-Missouria land. Both of their incomes, therefore, were fully taxable by the State of Oklahoma. The denial of their claims for refund, and the proposed assessment for 1997, were correct.

5. In addition, taxpayers' claims for refund for 1991 and 1992 were properly denied because they were not timely filed. Claims for refund of State income tax must be filed within three years of the due date of the original return, or they are forever barred. 68 O.S. Supp. 1997, § 2373. *Neer v. State ex rel. Oklahoma Tax Com'n*, 982 P.2d 1071 (Okla. 1999); *Redbird v. Oklahoma Tax Com'n*, 947 P.2d 525 (Okla. 1997).

WAIVER OF PENALTY AND INTEREST

The facts of this case demonstrate that taxpayers' claim of exclusion was based upon a good faith misunderstanding of the law regarding whether their 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 protest 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.