

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-07-16-012 / NOT PRECEDENTIAL  
**ID:** N9600182  
**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. Taxpayer is an enrolled member of the Otoe-Missouria Tribe of Indians of Oklahoma, a federally recognized Indian tribe. Taxpayer's spouse is a member of the Ponca Tribe of Indians of Oklahoma, another federally recognized Indian tribe.

2. During the tax years in question PROTESTANT was employed by the Otoe-Missouria Tribe on land held in trust for that tribe by the United States. At the same time, taxpayer and his spouse lived together on land which was part of an individual allotment of the Ponca tribe, and which was held in trust by the United States for THE SPOUSE, a member of the Ponca Tribe.

3. Taxpayer filed amended Oklahoma income tax returns for the tax years 1989 through 1992 and 1994, seeking a refund of all state income taxes paid on taxpayer's wages received from his employment by his Tribe, claiming such income to be exempt from taxation by the State. The Commission's Audit Division subsequently denied those refund claims. On taxpayer's original Oklahoma income tax return for 1995, taxpayer excluded the income from his tribal employer, for the same reason. The Audit Division subsequently disallowed the claimed exclusion and, on March 31, 1998, proposed the assessment of additional taxes in the amount of \$2,121.00, plus interest thereon to that date of \$623.23. Taxpayer protests both the denial of his refund claims and the proposed assessment for 1995.

**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, although PROTESTANT was employed on Indian country under the jurisdiction of his own tribe, he resided in the Indian country of another tribe, one of which he was not a member. His income, therefore, was fully taxable by the State of Oklahoma. The disallowance of taxpayer's claimed exclusion was proper, and the denial of his refund claims and the proposed assessment for 1995 were correct.

**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 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.