JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-07-16-014 / NOT PRECEDENTIAL**
ID: **N9600087**
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 a claim for refund of income taxes paid on income received from employment 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 Pawnee Nation of Oklahoma (formerly the Pawnee Tribe 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, both taxpayers were employed by the Indian Health Service of the United States Department of Health and Human Services. PROTESTANT's work location was on the Pawnee Tribal Reserve, land held in trust for that tribe by the United States. SPOUSE's employment was at White Eagle, Oklahoma, on land held in trust for the Ponca Tribe by the United States. From and after October 1, 1992, taxpayers resided on land which was part of an original Ponca allotment. The land was still subject to restrictions against alienation, and was held in trust by the United States for SPOUSE.

3. On or about April 15, 1994, taxpayers filed amended Oklahoma income tax returns for 1992[1] and 1993, claiming a refund of Oklahoma income taxes they had paid on the wages they had received from employment in Indian country. On March 20, 1997, taxpayers filed amended returns for 1994 and 1995, seeking similar refunds. The Audit Division subsequently approved and allowed the refund claims insofar as they pertained to SPOUSE's income earned after October 1, 1992. No further protest was lodged as to this determination, and the taxability of SPOUSE's income is not at issue in this proceeding. The Audit Division, however, disallowed PROTESTANT's claimed exclusion and denied the refund claims insofar as they pertained to his income. Taxpayers protest.

[1] Taxpayers have subsequently modified their refund request for 1992 to include only earnings and time periods after October 1, 1992.

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. Section 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 did not reside in Indian country under the jurisdiction of the tribe of which he was a member. His income, therefore, was fully taxable by the State of Oklahoma. The claims for refund as pertains to his income were correctly disallowed.

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.