JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-07-16-015 / NOT PRECEDENTIAL**
ID: **N9600073**
DATE: **07-16-02**
DISPOSITION: **SUSTAINED IN PART / DENIED IN PART**
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 A is a member of the Sac and Fox Nation of Oklahoma[1], a federally recognized Indian tribe. TAXPAYER B is a member of the Pawnee Nation of Oklahoma[2], another federally recognized Indian tribe.

2. During the tax years in question, both taxpayers were employed on lands held in trust by the United States for the Pawnee Nation. TAXPAYER B was employed by the United States Department of Health and Human Services - Indian Health Service. TAXPAYER A was employed by the Pawnee Nation. Both places of employment were on the Pawnee Tribal Reserve in Pawnee, Oklahoma. TAXPAYER A also received small amounts of income from other employers in 1994 and 1996. No evidence has been submitted as to the location of those employments.

3. At the same time, taxpayers lived together on restricted land held in trust by the United States for TAXPAYER B's mother. The land was a portion of an original allotment of Pawnee lands, and was under the jurisdiction of the Pawnee Nation.

[1] Formerly known as the Sac and Fox Tribe of Oklahoma.

[2] Formerly known as the Pawnee Tribe of Oklahoma.

4. On or about May 2, 1994, taxpayers filed an amended Oklahoma income tax return for the tax year 1993, seeking a refund of all state income taxes they had paid on their income from employment on Pawnee tribal trust land, claiming such income to be exempt from taxation by the State. The Commission's Audit Division subsequently denied the claimed refund.[3] In addition, on taxpayers' original Oklahoma income tax returns for 1994 and 1996, taxpayers excluded the income they had received from employment in Indian country for the same reason, and paid no state taxes thereon. The Audit Division subsequently disallowed the claimed exclusion[4] and recalculated taxpayers' tax liability accordingly. On September 30, 1997, the Division proposed assessments for the ensuing tax deficiency in the amount of $1,511.00 for 1994, plus interest thereon to that date of $557.00, and $1,757.00 for 1996, plus interest of $121.31. Taxpayers protest.

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).

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[3] The Audit Division has since conceded that the exclusion claim and refund should be allowed as to PROTESTANT B's income. The taxability of her income is no longer at issue in this proceeding - only that of PROTESTANT A.

[4] See Footnote 3.

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 A neither worked nor lived in Indian country under the jurisdiction of the tribe of which he was a member. Although he lived and worked in Indian country, the land where he lived and worked was under the jurisdiction of the Pawnee Nation. TAXPAYER B was not a member of that tribe. TAXPAYER B's income, therefore, was fully taxable by the State of Oklahoma, and the denial of the claimed refund for 1993 was correct insofar as it pertained to his income. Likewise, the proposed assessments for 1994 and 1996[5] are correct insofar as they pertain to his income. The protest should be denied to that extent, and the refund and assessments should be adjusted accordingly.

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, Section 220.

DISPOSITION

The protest should be denied as it pertains to PROTESTANT A's income. As to that income, the refund claim should be disallowed. The proposed assessments should be adjusted, and the tax deficiency attributable to his income should be adjudged due and owing. However, any penalty or interest assessed or accruing in connection with such deficiency, to the date of the Commission's order herein and for a period of 30 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.

[5] Taxpayers also excluded all of their "Indian country" income on their original 1995 returns. However, no evidence has been submitted that any assessment was proposed for that year. Taxpayers' liability for 1995, therefore, if any, is not at issue in this proceeding.