

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-07-16-016 / NOT PRECEDENTIAL
ID: N9600060
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 imposition by the State of Oklahoma of an income tax on PROTESTANT's 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 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 a member of the Ponca Tribe of Indians of Oklahoma, a federally recognized Indian tribe. Taxpayer's spouse is a member of the Pawnee Nation of Oklahoma¹, another federally recognized Indian tribe.

2. During the tax years in question, PROTESTANT was employed by the Indian Health Service of the United States Department of Health and Human Services, on land held in trust by the United States for the Pawnee Nation. At the same time, taxpayers resided in Oklahoma, on part of an original restricted Pawnee allotment, on land held in trust by the United States for PROTESTANT'S SPOUSE.

3. Taxpayers timely filed amended Oklahoma income tax returns for the tax years 1993 through 1995 and 1997 through 1999, seeking a refund of state income taxes paid on or withheld from PROTESTANT's wages, claiming such income to be exempt from state taxation. The Commission's Audit Division has denied or notified taxpayers of its intent to deny those refund claims. On taxpayers' original joint income tax return for 1996, taxpayers excluded that income for the same reason, claiming a similar refund.²

¹ Formerly known as the Pawnee Tribe of Oklahoma.

² Both the amended returns and the original 1996 return also claimed exclusion of PROTESTANT's SPOUSE'S income earned on Pawnee trust land. The claimed exclusion and resulting refunds were approved and allowed as to his income, and are not at issue in this proceeding.

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 PROTESTANT's income and recalculated taxpayers' tax liability accordingly. On March 31, 1998, the Division issued a proposed assessment of additional tax for 1996 in the amount of \$1,757.00, plus interest thereon to that date of \$252.72. Taxpayers protest both the proposed assessment and the denial of their claimed refunds.

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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, PROTESTANT neither derived her income nor did she reside on Indian country under the jurisdiction of the tribe of which she was a member. Accordingly, her income was fully taxable by the State of Oklahoma. The disallowance of the claimed exclusion of her income was proper, the proposed assessment was correct, and the refund claims as to her income should be denied.

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 foregoing protest should be denied, and the proposed assessment of deficient taxes should be adjudged due and owing. The penalty and interest assessed or accruing 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.