JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-07-16-017 / NOT PRECEDENTIAL**
ID: **N9600217 / N9800014**
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," and the proposed assessment of additional state income taxes on that income. After a hearing, and upon consideration of said claim and protest, the files and records of the Oklahoma Tax Commission, and the evidence adduced in regard hereto, 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 A is a member of the Osage Nation of Oklahoma, a federally-recognized Indian tribe. Taxpayer B is a member of the Pawnee Tribe of Oklahoma, also a federally-recognized Indian tribe.

2. During the tax years 1992 through 1996, TAXPAYER B was employed by the Pawnee Tribe on the Pawnee Tribal Reserve, land held in trust for that tribe by the United States. At the same time, taxpayers lived on property located in Osage County, Oklahoma, on land that was at one time "subject to the condition" that while title to the land remained in AN ANCESTOR or her Osage Indian heirs or devisees who do not have certificates of competency, "the same shall not be alienated or encumbered without the approval of the Secretary of the Interior or his authorized representative."

3. Taxpayers have provided no evidence regarding the mesne conveyances or devises by which taxpayers came into ownership or possession of this property. However, on April 12, 1995, the above-named taxpayers gave a mortgage on said property to the ANONYMOUS Bank of ANYTOWN, Oklahoma, which recites that it is a renewal or extension of a similar recorded mortgage dated April 8, 1993. This renewal mortgage does not show on its face, nor is it accompanied by any documents, that indicate that the property is subject to any restrictions against alienation or encumbrance, or that the mortgage had been or needed to be approved by the Secretary of the Interior or any other person or agency. The mortgage does contain a specific power of sale granted by the mortgagors, taxpayers herein, in the manner provided by the Oklahoma Power of Sale Mortgage Foreclosure Act, 46 Okla. Stat. Section 40 *et seq*.

4. During the years in question, taxpayers did not reside within a formal Indian reservation or on lands either held in trust or otherwise reserved or set apart by the United States for an Indian tribe or any of its members. There is no evidence that at the time in question the land was subject to any restrictions.

5. For the tax year 1992, taxpayers filed an amended Oklahoma income tax return, excluding the income TAXPAYER B received from her employment by the Pawnee Tribe, and requesting a refund of $1,272 in state income taxes previously paid thereon. The Audit Division disallowed the claimed exclusion and denied the requested refund.

6. For the tax years 1993, 1994, 1995 and 1996, taxpayers excluded TAXPAYER B' tribal income on their original state income tax returns. In each case the Audit Division disallowed the exclusion. For 1993, the Division accordingly proposed the assessment of additional, or deficient, taxes in the amount of $1,749.00, plus interest of $672.24 through November 15, 1996; for 1994, $114.00 in additional tax; for 1995, additional taxes of $222.00; and for 1996, the Division proposed the assessment of $1,777.00 tax, plus $255.60 interest through March 31, 1998.

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*. The term "Indian country" does not automatically include all lands located within the original boundaries of a former or reduced Indian reservation. *South Dakota v. Yankton Sioux Tribe*, 118 S. Ct. 789 (1998).

3. Taxpayer did not live on a formal or informal reservation, or on an Indian allotment. Neither did taxpayer reside within a dependent Indian community. The term "dependent Indian communities" contained within 18 U.S.C. Section 1151 refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements X first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence. *Alaska v. Native Village of Venetie Tribal Government*, __U.S.__, 118 S. Ct. 948 (1998). Neither of these requirements is satisfied in this case.

4. Taxpayers did not live in "Indian country." In addition, although taxpayers' residence was located on what once may have been an Osage allotment, TAXPAYER B, whose income is here in question, is a Pawnee, who earned that income in Pawnee Indian country. 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).

5. Accordingly, TAXPAYER B' income was fully taxable by the State of Oklahoma. The claimed refund was properly denied, and the deficiency assessments were correctly proposed.

DISPOSITION

The foregoing protest should be denied, and the proposed deficiency assessments above stated, together with accruing interest, should be adjudged due and owing.

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.