JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 2006-04-25-02 / NOT PRECEDENTIAL
ID: N-01-027
DATE: APRIL 25, 2006
DISPOSITION: DENIED
TAX TYPE: INCOME TAX
APPEAL: NO APPEAL TAKEN

HEARING EXAMINER'S REPORT

The above-named taxpayers protest the proposed assessment of income taxes on income earned in "Indian country." The parties are represented by counsel. After a hearing, and upon consideration of said 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 recommendations as to the final disposition of said protest.

FINDINGS OF FACT

1. Taxpayer is a member of the Muscogee (Creek) Nation of Oklahoma, a federally recognized Indian Tribe.

2. During the tax years 1998, 1999 and 2000, taxpayer owned and operated a retail business known as SMOKE SHOP located on restricted Creek allotment land in BIG CITY, Oklahoma. At the same time, taxpayer maintained a residence in or near SMALL TOWN, Oklahoma, with taxpayer's wife, MRS. TAXPAYER, and her two children. The SMALL TOWN address was not located on trust or allotment land or on a formal or informal Indian reservation.

3. During the years in question, taxpayer typically spent five or six nights a week at the business location, to guard against break-ins and theft. On the nights that taxpayer did not stay at the business, taxpayer had one of his regular employees spend the night there. Taxpayer usually spent weekends at the SMALL TOWN address with his family. Taxpayer's wife and stepchildren lived full-time at the SMALL TOWN residence. The residence address is approximately 35 to 40 miles away from the business location.

4. During those years, taxpayer was also employed by CORPORATION. He listed the SMALL TOWN address as his home address with his employer and on his pension records with A DIFFERENT CORPORATION. Taxpayer listed the SMALL TOWN address as his home address on his Oklahoma driver's license, his state and federal income tax returns, and his account with TRUST CO. He claimed a homestead exemption on the SMALL TOWN property with the COUNTY ASSESSOR'S OFFICE.

5. A former resident of BIG CITY, taxpayer maintained his registration to vote in BIG COUNTY, and continued to vote there.

6. On taxpayers' 1998, 1999 and 2000 Oklahoma income tax returns, taxpayers excluded the income MR. TAXPAYER earned from the SMOKE SHOP, contending it was exempt from state taxation. The Audit Division disallowed the claimed exclusion, and on June 29, 2001 and on January 21, 2002, proposed to assess the following additional tax deficiencies, interest and penalties:

1998
$6,411.00 - Additional Tax
2,123.64 - Interest through 6/29/01
644.10 - Penalty
$9,175.74 - Total

1999
$ 8,123.00 - Additional Tax
2,156.49 - Interest through 1/21/02
812.30 - Penalty
$11,091.79 - Total

2000
$14,601.00 - Additional Tax
1,686.12 - Interest through 1/21/02
1,460.10 - Penalty
$17,747.22 - Total

7. 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 of all persons, Indian and non-Indian alike, residing in the State outside Indian country. *Chickasaw Nation,* 115 S.Ct., at 2217.

2. Here, there is no question or argument between the parties that, as defined by federal law and decisions of the United States Supreme Court, the business location where MR. TAXPAYER earned the income here in question was located within Indian country, or that the residence located near SMALL TOWN, Oklahoma, was not. The question here is, where was MR. TAXPAYER'S permanent residence, or domicile?

3. A person's domicile is the place where he has his true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. *Suglove v. Oklahoma Tax Com'n,* 605 P.2d 1315, 1317 (Okla. 1979). For MR. TAXPAYER, that was his home in SMALL TOWN, and he represented it as such to the COUNTY

ASSESSOR, 68 O.S. 1991, §2888(A), his employer, the State of Oklahoma and the United States government.

4. Taxpayers argue that, because he spent five or six nights a week at the business, the business was his home, his "domicile." The facts of this case, however, do not support such a conclusion. MR. TAXPAYER spent many nights at the business, but purely for business purposes, and not to make the business his home. His stays at the business at night were temporary and transient for business purposes—when he was not there, he had one of his employees stay. The undersigned cannot find or conclude that he intended to make it his home.

5. MR. TAXPAYER, therefore, did not "live" within Indian country as that term is used in *McClanahan*. Accordingly, his income was fully taxable by the State of Oklahoma, and the proposed assessments were correct.

6. The protest should be denied.

DISPOSITION

The foregoing protest to the proposed assessments for 1998, 1999 and 2000 should be denied.

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.