JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2009-11-03-14 / NON-PRECEDENTIAL**
ID: **P-09-112-H**
DATE: **NOVEMBER 3, 2009**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears pro se.[1] The Case Management Section of the Account Maintenance Division ("Division"), Oklahoma Tax Commission, appears by and through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On July 1, 2009, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[2] and the *Rules of Practice and Procedure Before the Oklahoma Tax Commission*.[3] On July 2, 2009, a letter was mailed to the Protestant stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-09-112-H. The letter also advised the Protestant that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission.*[4]

On July 14, 2009, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division and a copy of a letter dated July 14, 2009, to Protestant requesting the information necessary to establish a "tribal exclusion."[5] On July 31, 2009, the Notice of Prehearing Conference was mailed to the last-known address of the Protestant, setting the prehearing conference for August 17, 2009, at 2:00 p.m.[6]

---

[1] "**pro se"** (proh **say** *or* **see**), *adv. & adj.* [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>.--Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per*. See PROPRIA PERSONA. BLACK'S LAW DICTIONARY (8th ed. 2004), available at *http://westlaw.com*. (March 16, 2006).

[2] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[3] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[4] *Id.*

[5] In OTC ATTORNEY'S letter, the Protestant was advised that he must satisfy three (3) requirements: (1) prove that he is a member of a federally-recognized Indian tribe and (2) & (3) prove that he works and lives on land that is held in trust by the United States (defined under the IRS Code as "Indian Country") for the tribe to which he belongs.

[6] OKLA. STAT. ANN. tit. 68, § 208 as amended by Laws 2009, c. 426, § 4, emerg. eff. June 1, 2009. The notice was mailed to the Protestant at PROTESTANT'S ADDRESS.

On August 17, 2009, at 2:00 p.m. the prehearing conference was held as scheduled. The Protestant did not appear at the conference. On August 19, 2009, notice was served upon the parties that the record in this cause would be closed and the matter submitted for decision upon the filing of a verified response to the protest by the Division. On August 18, 2009, the Division filed its Verified Response. The Verification attached to the Division's Verified Response was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Case Management Section, Account Maintenance Division, Oklahoma Tax Commission.[7] The record in this matter was closed and this case was submitted for decision on September 21, 2009.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the Division's Verified Response, the undersigned finds:

1. On February 21, 2008, the Protestant filed his Oklahoma Resident Income Tax Return (Form 511) for the 2007 tax year. On Line two (2), the Protestant claimed his W-2 income was exempt as "tribal income."[8]

2. The Division denied the Tribal Income Exemption ("TIE") adjusting the Protestant's income tax return for the 2007 tax year,[9] as follows, to-wit:

		Reported	Adjusted
Line 02	Subtractions from Federal AGI	26,965.00	0.00
Line 07	Oklahoma AGI	0.00	26,965.00
Line 09	Income after Adjustments	0.00	26,965.00
Line 13	Oklahoma Taxable Income	0.00	23,215.00
Line 14	Oklahoma Income Tax	0.00	1,067.00
Line 19	Balance	0.00	1,067.00
Line 31	Overpayment	1,149.00	82.00
Line 35	Refund	1,149.00	82.00

3. The Protestant filed his Oklahoma Resident Income Tax Return (Form 511) for the 2008 tax year electronically (date unknown). On Line two (2), the Protestant claimed his W-2 income was exempt as "tribal income."[10]

[7] *See* OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

[8] Division's Exhibit A-1. The Protestant's address on the 2007 return is RURAL ROUTE ADDRESS.

[9] Division's Exhibit B-1, which is a copy from the Comments Sections of the Accounts Receivable System. The date the Division mailed out the assessment may have been on or about May 31, 2008, but from the exhibit there is no way to be sure, which is probably why the Division has not challenged the timeliness of the protest on the 2007 tax year.

[10] Division's Exhibit A-2. The Protestant's address on the 2008 return is PROTESTANT'S ADDRESS.

4. On March 17, 2009, the Division denied the TIE adjusting the Protestant's income tax return for the 2008 tax year,[11] as follows, to-wit:

		Reported	Adjusted
Line 02	Subtractions from Federal AGI	35,097.00	0.00
Line 07	Oklahoma AGI	0.00	35,097.00
Line 09	Income after Adjustments	0.00	35,097.00
Line 13	Oklahoma Taxable Income	0.00	30,847.00
Line 14	Oklahoma Income Tax	0.00	1,465.00
Line 19	Balance	0.00	1,465.00
Line 31	Overpayment	1,188.00	0.00
Line 35	Refund	1,188.00	0.00
Line 36	Income Tax Due	0.00	277.00
Line 39	Total Balance Due	0.00	277.00

5. During the tax years 2007 and 2008 ("Audit Periods"), the Protestant was employed by TRIBAL EMPLOYER,[12] EMPLOYER ADDRESS.[13] State income tax was withheld from the Protestant's wages during the Audit Periods for $1,149.00 and $1,188.00, respectively.[14]

6. On April 20, 2009, the Division received a protest to the Division's denial of the TIE for the Audit Periods,[15] with copies of the following attached thereto:

- A facsimile transmitted March 26, 2009, to Protestant from COORDINATOR, 911 Coordinator, COUNTY 1, which states:

  > To Whom It May Concern:
  > PROTESTANT has an address in our database of PROTESTANT'S ADDRESS. If there are any further questions, please do not hesitate to contact us.
  >
  > COORDINATOR
  > COUNTY 1[16]

[11] Division's Exhibit B-2.

[12] The Administrative Law Judge is taking judicial notice of the Oklahoma Secretary of State's website to complete the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 (July 11, 1996). According to the Oklahoma Secretary of State's website, TRIBAL EMPLOYER was registered effective July 20, 2006, as a "Foreign Limited Liability Company." *See* the Oklahoma Secretary of State's website at http://www.sooneraccess.state.ok.us. (Visited September 21, 2009).

[13] *See* Notes 8, 10 and 12, *supra*. *See also* http://www.allbusiness.com and http://www.INDIANcasino.com (Last visited September 21, 2009). TRIBAL EMPLOYER does business in Casinos, Gas Stations, Hotels & Motels, Sports and Recreation Facilities and Venues, and Tobacco Stores.

[14] *See* Notes 8 and 10, *supra*. On both W-2s the Protestant's address is RURAL ROUTE ADDRESS.

[15] Division's Exhibit C. *See* Note 11, *supra*. The Residential Statement does not indicate if RURAL ROUTE ADDRESS is one and the same address as PROTESTANT'S ADDRESS.

- Residential Statement: This information is being provided to the Oklahoma Tax Commission to verify residency for the following person: (All information will be kept confidential.)

  PROTESTANT
  PROTESTANT'S ADDRESS

  I have known PROTESTANT for several years and can attest to his residency at the above Provided Address:

  PERSON 1
  PERSON 1 ADDRESS

  PERSON 2
  PERSON 2 ADDRESS

  PERSON 3
  PERSON 3 ADDRESS
  PHONE NUMBER[17]

7. On April 28, 2009, the Division mailed a letter to the Protestant advising that the information received April 20, 2009, had been reviewed, but based upon the facts the Division believed its adjustments for the audit periods were correct.[18]

8. On or about August 17, 2009, the Protestant provided the Division copies[19] of the following, to-wit:

- A letter dated November 20, 2003, from INDIAN Nation, Real Estate Services, to RECIPIENT concerning the PERSON X Allotment in COUNTY 1.[20]

- An Order dated June 9, 2006, from Case No. CV-XX-XX in the District Court of the INDIAN Nation granting the Protestant's Application to change his name from PREVIOUS NAME to PROTESTANT. The Order recites that the Protestant "…is a

[16] Division's Exhibit C. The underlined portions are handwritten on the exhibit.

[17] The Residential Statement was notarized April 15, 2009.

[18] Division's Exhibit E. The letter also advised of and listed for Protestant information which could be provided to the Division to support the TIE for the Audit Periods.

[19] Division's Exhibits C-D.

[20] The letter contains a legal description and a list of heirs along with a statement that the property is "restricted, non-taxable ownership." The Protestant's name is not one of the heirs listed on the letter, nor does the letter identify the legal description as being the Protestant's residential address or what connection there is between the Protestant and the PERSON X Allotment.

citizen of the INDIAN Nation and is now and has been for more than thirty days next preceding the filing of the petitioner domiciled in the State of Oklahoma as an actual resident of COUNTY 2 in ANY TOWN, Oklahoma."[21]

- An Identification Card ("ID") issued by the State of Oklahoma pursuant to the provisions of Section 6-105.3(A) of Title 47,[22] which contains (1) Protestant's name and address of RURAL ROUTE ADDRESS, (2) ID number, (3) effective date, (4) expiration date, (5) birth date, and (6) gender, height, weight, and eye color.

- Certificate of Degree of Indian Blood ("CDIB") dated July 13, 2004, indicating that the Protestant was born DATE, and is five-eighth (⅝) degree Indian blood of the INDIAN Tribe.[23]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[24]

2. The State of Oklahoma 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.[25]

3. The State of Oklahoma may tax the income (including wages from tribal employment) of all persons, Indian and non-Indian alike, residing in the State outside Indian Country.[26]

4. As defined by federal law and decision of the U.S. Supreme Court, "Indian Country" includes formal and informal reservations, dependent Indian communities, and Indian allotments,

---

[21] *See* Note 19, *supra.*

[22] OKLA. STAT. ANN. tit. 47, § 6-105.3(A) (West 2007), which states in pertinent part:

> In addition to the licenses to operate motor vehicles, the Department of Public Safety may issue cards to Oklahoma residents for purposes of identification only. The identification cards shall be issued, renewed, replaced, canceled and denied in the same manner as driver licenses in this state.

[23] The CDIB was issued in the Protestant's former name PREVIOUS NAME. *See* Note 19, *supra.*

[24] OKLA. STAT. ANN. tit. 68, § 221(C) (West Supp. 2009).

[25] *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).

[26] *Chickasaw Nation*, 115 S.Ct., *at* 2217.

whether restricted or held in trust by the United States, the Indian titles to which have not been extinguished.[27]

5. Formal Indian reservations have not existed in the State of Oklahoma for many years. For purposes of Section 1151, however, the Supreme Court has recognized "informal" reservations, which include lands held in trust for a tribe by the United States,[28] 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.[29]

6. "Dependent Indian Communities"[30] means and refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy the following two (2) requirements:

(A) They have been set aside by the federal government for the use of the Indians as Indian land; and,

(B) They are under federal superintendence.

7. A CDIB card serves as the Bureau of Indian Affairs ("BIA") certification that an individual possesses a specific quantum of Indian blood. The BIA does not rely on whether the applicant is a member of an Indian tribe.[31]

8. The Uniform Enforcement of Foreign Judgments Act ("UEFJA") affirms the power of the Supreme Court of the State of Oklahoma to issue standards for extending full faith and credit to the records and judicial proceedings of any court of any federally recognized Indian nation, tribe, band or political subdivision thereof, including courts of Indian offenses. In issuing any such standard the Supreme Court of the State of Oklahoma may extend such recognition in whole or in part to such type or types of judgments of the tribal courts as it deems appropriate where tribal courts agree to grant reciprocity of judgments of the courts of the State of Oklahoma in such tribal courts.[32]

9. "Tribal Judgment" means any final written judgment, decree or order of a tribal court duly signed by a judicial officer and filed in a Tribal Court.[33]

---

[27] 18 U.S.C. § 1151. *See Sac and Fox at* 123, Note 25, *supra.*.

[28] *Oklahoma Tax Commission v. Citizen Band of Potawatomi Tribe of Okla.*, 498 U.S. 505 (1991).

[29] *See Sac and Fox,* Note 25, *supra.*

[30] OKLA. ADMIN. CODE § 710:50-15-2(a)(3) (June 25, 2004).

[31] *Davis v. U.S.*, 199 F.Supp.2nd 1164 (W.D. Okla. 2002).

[32] OKLA. STAT. ANN. tit. 12, § 728 (West 2000).

[33] OKLA. STAT. ANN. tit. 12, Ch. 2, App., Rule 30 (A)(3) (West 2000).

10. The district courts of the State of Oklahoma shall grant full faith and credit and cause to be enforced any tribal judgment where the tribal court that issued the judgment grants reciprocity to judgments of the courts of the State of Oklahoma, provided, a tribal court judgment shall receive no greater effect or full faith and credit under this rule than would a similar or comparable judgment of a sister state.[34]

11. The District Court of the INDIAN Nation grants reciprocity to judgments of the courts of the State of Oklahoma.[35]

12. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[36] A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[37]

DISCUSSION

The Protestant provided a copy of his CDIB card which indicates that he is five-eight ($^5/_8$) degree Indian blood of the INDIAN Tribe. A CDIB card is not proof that the Protestant is a member of the INDIAN Nation.[38] Included in the materials attached to the protest is a copy of an Order dated June 9, 2006, from Case No. CV-XX-XX in the District Court of the INDIAN Nation granting the Protestant's Application to change his name from PREVIOUS NAME to

---

[34] OKLA. STAT. ANN. tit. 12, Ch. 2, App., Rule 30 (B)(West 2000).

[35] *See* Note 12, *supra.* The Administrative Law Judge is taking judicial notice of the list of tribal courts that grant full faith and credit to the courts of the State of Oklahoma, which is maintained by the Administrative Office of the Courts.

[36] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

> In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

> . . . "preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[37] *See Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

[38] *See* Note 12 and Note 31, *supra.* The Administrative Law Judge is taking judicial notice of the INDIAN Nation website at http://www.INDIAN.org. (Visited September 24, 2009). As stated on the INDIAN Nation website, "The INDIAN Nation requires no blood quantum. To be considered a INDIAN citizen, you need one Indian ancestor listed on the 1906 federal census of our people, known as the Dawes Rolls. With that one Indian ancestor, a person is part of our INDIAN family regardless of what other heritage he or she might have."

PROTESTANT. The Order recites that the Protestant "…is a citizen of the INDIAN Nation and is now and has been for more than thirty days next preceding the filing of the petitioner domiciled in the State of Oklahoma as an actual resident of COUNTY 2 in ANY TOWN, Oklahoma."[39] The Order is signed by a Judge of the District Court and filed with the District Court of the INDIAN Nation.[40] The Protestant has met his burden of proof that he was a member of the INDIAN Nation during the Audit Periods.[41]

The Protestant did not provide a copy of the trust deed which reflects that his principle residence during the Audit Periods, RURAL ROUTE ADDRESS, is an Indian allotment, restricted, or held in trust by the United States.

The Protestant did provide a copy of a letter from the COUNTY 1 911 Coordinator, which states that the Protestant has the address of PROTESTANT'S ADDRESS, in its database. The Protestant provided a copy of a Residential Statement signed by three (3) individuals and notarized that they have known the Protestant for several years and can attest to his residency at PROTESTANT'S ADDRESS. The Protestant also provided a copy of a letter dated November 20, 2003, from the INDIAN Nation Real Estate Services to an unknown individual stating that real property, as more fully described therein, was allotted to PERSON X, and that as of November 20, 2003, the current ownership was restricted, non-taxable vested in the heirs of PERSON X (HEIR 1, HEIR 2, HEIR 3, HEIR 4, and HEIR 5), each having a one-fifth ($^1/_5$) interest. The Protestant has failed to connect the evidentiary dots to show his principle residence at RURAL ROUTE ADDRESS / PROTESTANT'S ADDRESS was an Indian allotment, restricted, or held in trust by the United States during the Audit Periods.

Attached to the Protestant's 2007 and 2008 Income Tax Returns are copies of W-2's from his employer, TRIBAL EMPLOYER. The Protestant did not provide a copy of the trust deed or other legal document describing the real estate upon which he was employed or performed work during the Audit Periods, to verify the land was held by the United States in trust for a INDIAN Tribal member or the INDIAN Tribe.

The Protestant has failed to meet his burden of proof that he works and lives on land that is held in trust by the United States for the INDIAN Tribe.

---

[39] *See* Note 19, *supra*.

[40] *Id.*

[41] *See* Note 37, *supra*.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the protest to the Division's Assessments for the Audit Periods should be denied.

OKLAHOMA TAX COMMISSION

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.