JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-10-12-02 / NON-PRECEDENTIAL**
ID: **P-10-117-K**
DATE: **OCTOBER 12, 2010**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Several correspondences and notices regarding these proceedings have been served on Protestant, PROTESTANT at her last known address[1]. Protestant has not responded to any of these notices. The Account Maintenance Division of the Oklahoma Tax Commission ("Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

Upon audit of Protestant's 2009 resident Oklahoma income tax return and accompanying documentation, the Division disallowed the tribal income exemption of her wages and adjusted the sales tax relief credit from $200.00 to $80.00. As a result of the audit the Division reduced the claimed refund of $1,424.00 to a proposed amount of $452.00. Protestant timely protested the disallowance of the tribal income exemption.

On April 16, 2010, the Division referred its file to the Office of the Administrative Law Judges for further proceedings pursuant to the Uniform Tax Procedure Code[2] and the Rules of Practice and Procedure Before the Office of the Administrative Law Judges[3]. The case was docketed as Case No. P-10-117-K and assigned to ALJ, Administrative Law Judge.[4]

A pre-hearing conference was scheduled for June 10, 2010, by *Prehearing Conference Notice* ("*Notice*") issued May 14, 2010.[5] Protestant neither appeared at the conference nor responded to the *Notice*. By *Prehearing Conference Order* ("*Order*") issued June 11, 2010, the Division was directed to file a verified response to protest no later than thirty (30) days from the date of the *Order* and Protestant was advised that a reply could be filed within thirty (30) days of the filing date of the verified response. The *Order* further directed that if an oral hearing was not requested, the record would be closed and the protest submitted for decision upon completion of the announced procedural schedule[6]. Protestant did not respond to the *Order*.

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[1] 68 O.S. Supp. 2009, § 208.

[2] 68 O.S. 2001, § 201 et seq., as amended.

[3] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*")

[4] *OAC*, 710:1-5-22(b).

[5] *OAC*, 710:1-5-28.

[6] *OAC*, 710:1-5-28(b).

The *Division's Verified Response* was filed June 11, 2010. Attached thereto were Exhibits A through H. Protestant did not file a reply to the *Verified Response*. On August 18, 2010, the record was closed and the protest was submitted for decision.[7]

FINDINGS OF FACT

Upon review of the file and records, including the *Verified Response* and attached exhibits, the undersigned finds:

1. Protestant filed a 2009 resident Oklahoma Income Tax Return listing her address as ADDRESS, and reporting a tribal income exemption of her wages and a sales tax relief credit of $200.00. Exhibit A. A refund of $1,424.00 was requested by the return, consisting of the state income tax withholding from her wages paid by the United States Department of Interior and the $200.00 sales tax relief credit. Exhibit G and A.

2. During 2009, Protestant was employed by the Bureau of Indian Affairs, DIRECTION Plains Regional Office, CITY, Oklahoma which is located on Indian trust land held by the United States for the TRIBE (TRIBE of COUNTY, Oklahoma). Exhibit H.

3. Protestant is a member of the TRIBE of Oklahoma. Exhibit D.

4. Protestant submitted proof that she is an owner of record of certain real property located in COUNTY, Oklahoma which is held in a trust status under the jurisdiction of the United States of America. Exhibit E.

5. Upon audit of Protestant's 2009 income tax return and accompanying documentation, the Division disallowed the tribal income exemption and adjusted the sales tax relief credit from the amount of $200.00 to $80.00. Exhibit B.

6. The Division by letter dated February 4, 2010, notified Protestant of the adjustments to her 2009 return and the proposed reduction of the refund claimed on the return of $1,424.00 to an amount of $452.00. With respect to the disallowance of the tribal income exemption, the letter explains "[I]n order to deduct exempt tribal income, you must be employed by the tribe for which you are a member." Exhibit B.

7. Protestant timely protested the disallowance of the tribal income exemption. In the letter of protest, Protestant writes that she understands the sales tax relief credit adjustment, but questions the denial of the balance of the refund, arguing that notwithstanding whether she works for a tribe to which she is not a member, her place of employment is located on Indian trust land which is exempt from state taxes. Exhibit C.

8. In response to Protestant's letter of February 3, 2010, the Division in pertinent part writes:

[7] *OAC*, 710:1-5-39.

> As stated in our statutes, not all Tribal income is exempt.
>
> **Exempt Tribal Income**
>
> * * * * *
>
> The land that you live on and the work that you perform must all be within your tribe. Our records reflect that you live on TRIBAL Trust land but work for the Bureau of Indian Affairs affiliated with DIFFERENT TRIBE.[8]
> (Emphasis original).

9. In the *Verified Response*, the Division writes in the Statement of Facts that "Protestant failed to provide any documentation to [sic] that matches up the legal description she provided to the residential address listed on her 2009 income tax return" and argues in the Argument and Authority:

> In order to succeed in a claim for a tribal income tax exemption, a taxpayer must be able to prove (1) that she or [sic] [he] is a member of a federally-recognized Indian tribe; and that she (2) lives and (3) works on land that is held in trust by the United States for the tribe to which she is affiliated. All three prongs must be met. (Citations omitted).
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> Protestant proved one prong of the requirement: that she is a member of a federally recognized Indian tribe. Protestant failed, however to prove the other two prongs of the requirement for obtaining a tribal income tax exemption. Although it may be true that Protestant resides on land that is held in trust by the United States, it is uncertain as to whether the land is specifically held for the TRIBE. Even if, for arguments sake Protestant proved that she resided on land held in trust for the tribe to which she belongs, her claim for exemption would fail for the reason that she does not work on land that is held in trust for the TRIBE.

ISSUE

The issue presented for decision is whether Protestant's tribal income exemption is lost because her place of employment is located on trust land of a tribe to which she is not a member.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that:

1. Jurisdiction of the parties and subject matter of this action is vested in the Oklahoma Tax Commission. 68 O.S. 2001, § 207(d).

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[8] Letter dated February 25, 2010 which is contained in the file received from the Division and to which official notice is taken. *See, OAC*, 710:1-5-36.

2. The outcome of this proceeding is governed by the provisions of the Oklahoma Income Tax Act ("Act").[9] Oklahoma income tax is imposed upon the Oklahoma taxable income of every resident individual. 68 O.S. 2001, § 2355(A). *See, OAC*, 710:50-3-1.[10] The starting point for determining the "Oklahoma adjusted gross income" of an individual taxpayer is the "taxable income" with respect to any taxpayer as defined in the Internal Revenue Code as it applies to such taxpayer. 68 O.S. 2001, §§ 2358(A) and 2353(10). *See*, Ok. Const. Art. 10, § 12[11]. *See also*, ***General Accessory Manufacturing Company v. Oklahoma Tax Commission***, 2005 OK CIV APP 75, ¶ 9, 122 P.3d 476. A taxpayer's "taxable income" is subject to the adjustments provided in § 2358 of the Act, as amended, to arrive at Oklahoma adjusted gross income for individuals. 68 O.S. 2001, §§ 2358(A) and 2353(11) and (13). *See*, ***Getty Oil Co. v. Oklahoma Tax Commission***, 1977 OK 19, 563 P.2d 627. Section 2358 provides in pertinent part:

> A. The taxable income of any taxpayer shall be adjusted to arrive at Oklahoma taxable income for corporations and Oklahoma adjusted gross income for individuals, as follows:
>
> * * * * *
>
> 2. There shall be deducted amounts included in such income that the state is prohibited from taxing because of the provisions of the Federal Constitution, the State Constitution, federal laws or laws of Oklahoma.

3. The State is precluded from taxing the income of a member of a federally recognized Indian tribe who <u>both</u> earns that income and lives within Indian country governed by the member's tribe. ***McCanahan v. State Tax Commission of Arizona***, 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973); ***Oklahoma Tax Commission v. Sac and Fox Nation***, 508 U.S. 114, 113 S.Ct. 1985,

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[9] 68 O.S. 2001, § 2351 et seq., as amended.

[10] This rule provides: "[a]ll taxpayers must file Oklahoma Income Tax Returns. 'Taxpayer' means any person subject to income tax imposed by Oklahoma Statutes, or whose income is in whole or in part, subject to income tax imposed by any provision of the Oklahoma Statues."

[11] This section provides:

> The Legislature shall have power to provide for the levy and collection of license, franchise, gross revenue, excise, income, collateral and direct inheritance, legacy, and succession taxes; also graduated income taxes, graduated collateral and direct inheritance taxes, graduated legacy and succession taxes; also stamp, registration, production or other specific taxes.
>
> In the exercise of the powers provided for in this section, and notwithstanding any other provision of this Constitution, the Legislature may, with or without exceptions, modifications, or adjustments, define the amount on, in respect to, or by which any such tax or taxes are imposed or measured (a) by reference to any provisions of the laws (including administrative regulations, determinations, and interpretations) of the United States, as such laws may be or become effective at any time or from time to time; (b) by reference to any amount or amounts finally ascertained in determining amounts subject to taxation by the United States; or (c) by reference to any amount or amounts of tax finally ascertained to be payable to the United States.

Amended by State Question No. 444, Legislative Referendum No. 160, adopted at election held Aug. 27, 1968. Amendment proposed by Laws 1967, p. 689, S.J.R. No. 30.

124 L.Ed.2d 30 (1993); ***Oklahoma Tax Commission v. Chickasaw Nation***, 515 U.S. 450, 115 S.Ct. 2214, 132 L.Ed.2d 400 (1995).

4. In all proceedings before the Oklahoma Tax Commission, the taxpayer bears the burden of proof to show the action of the Commission is incorrect, and in what respect. *OAC*, 710:1-5-47. *See*, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 1988 OK 91, 768 P.2d 359.

5. The evidence presented shows that Protestant's place of employment is located on the trust land of a tribe to which she is not a member. Accordingly, the disallowance of the tribal income exemption was proper and correct.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is ORDERED that the protest of Protestant, PROTESTANT, 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.