

***McGirt* Income Tax FAQ**

“The Cherokee Nation reservation was never disestablished. My administration works each day to protect our sovereignty. It is the long-standing law of the land that the state of Oklahoma cannot tax the income of tribal citizens who live on and derive their income wholly from sources on their Nation’s reservation. My position is that this legal principle absolutely applies to the Cherokee Nation reservation and its citizens. Although the law is clear, I anticipate future court decisions on this issue. I encourage Cherokee citizens to proceed carefully with respect to their own taxes on the advice of tax professionals. My administration will continue working to ensure that the Cherokee Nation reservation is protected from unlawful interference by the State of Oklahoma.” – Cherokee Nation Principal Chief Chuck Hoskin Jr.

What is Cherokee Nation’s position on whether Oklahoma can tax individual Cherokee citizens living and working within the Cherokee Reservation?

Cherokee Nation maintains that its reservation has never been disestablished. The Nation has successfully argued in multiple state district courts that its reservation has never been disestablished. However, no state or federal appellate court has issued an opinion regarding this issue to date.

The U.S. Supreme Court has ruled there is a general presumption against state authority to tax individual Indians “within Indian Country, whether the particular territory consists of a formal or informal reservation, allotted lands, or dependent Indian communities” absent explicit congressional authorization. See *Oklahoma Tax Comm'n v. Sac & Fox Nation*.

Every individual who believes that he or she may be exempt from state income tax because they reside and derive income within the Cherokee Nation reservation need to be aware that these matters are presently working through the judicial process.

How did the decision in *McGirt* affect state income taxes?

On its face, the U.S. Supreme Court’s *McGirt* decision narrowly

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considered whether the boundaries of the Muscogee (Creek) Reservation had ever been disestablished. The Supreme Court ruled that the Muscogee Reservation was never disestablished and is considered “Indian country” as that term is defined in 18 U.S.C. § 1151.

The United States Supreme Court has long maintained that state income tax is unlawful as applied to reservation Indians with income derived wholly from reservation sources. *McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164, 165 (1973). Several states and tribes rely on the *McClanahan* ruling to exempt certain individuals from state income taxes.

Indians living on their own Nation’s reservation whose income is derived wholly from on- reservation sources may be exempt from state income tax. Only a tax or legal professional can assess the strength of any individual’s potential case for a refund of state income taxes or whether the individual must pay future state income taxes.

What does the Oklahoma Tax Commission’s rules say about the taxation of income derived from within Indian Country?

Okla. Admin. Code 710:50-15-2

a) Definitions. The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) “Indian Country” means and includes formal and informal reservations, dependent Indian communities, and Indian allotments, the Indian titles to which have not been extinguished, whether restricted or held in trust by the United States. [See: 18 U.S.C. § 1151]

¹ 508 U.S. 114 (1993)

(2) “Informal reservations” means and includes lands held in trust for a tribe by the United States 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.

(3) “Dependent Indian communities” means and refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy the following two 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.

(b) Instances in which income is exempt. The income of an enrolled member of a federally recognized Indian tribe shall be exempt from Oklahoma individual income tax when:

(1) The member is living within “Indian Country” under the jurisdiction of the tribe to which the member belongs; and, the income is earned from sources within “Indian Country” under the jurisdiction of the tribe to which the member belongs; or,

(2) The income is compensation paid to an active member of the Armed Forces of the United States, if the member was residing within his tribe's “Indian Country” at the time of entering the Armed Forces of the United States, and the member has not elected to abandon such residence.

(c) Instances in which income is not exempt. The income of an enrolled member of a federally recognized Indian tribe shall not be exempt from Oklahoma individual income tax when:

(1) The income is derived from sources outside of “Indian Country”, regardless of the taxpayer's residence.

(2) The member resides in Oklahoma, but not within “Indian Country,” regardless of the source of the income. (3) Either the source of the income or the place of residence is under the jurisdiction of a tribe of which the taxpayer is not a member.

(4) The member claims residence within “Indian Country” primarily by virtue of various Indian health, social, educational, welfare and financial programs. Even though administered by the Tribe within its own service area, these are merely forms of general federal aid, and are not sufficient to support a finding of “Indian Country” for purposes of this Section.

(5) The member claims residence on unrestricted, non-trust property, owned by an Indian Housing Authority. Such property does not fall within the definition of “Indian Country,” nor does residence thereon constitute residence within a dependent Indian community.

(d) Part-time residency. If an enrolled member of a federally recognized Indian tribe resides within “Indian Country” for a portion of the year, and resides outside “Indian Country” for a portion of the year, such enrolled member shall be taxed based upon where such enrolled member resided when the income in question was earned.

Can the federal government tax individual Indians living and working within the Cherokee Reservation?

The federal government has expansive authority to tax within the United States. Pursuant to this

authority, individual Indians are normally subject to federal income taxes unless a specific exemption applies. To determine whether some specific exemption applies in your case, you will need to consult a tax professional.

² Specific exemptions may include: income derived from restricted trust allotments and income earned through specific treaty or statutory rights.