BEFORE THE' STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
EDWARD T. AND PAMELA A. ARVISO)

For Appellants: Charles Scott, Jr.
California Indian Legal Services

For Respondent: Claudia K. Land
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Edward T. and Pamela A. Arviso for refund of personal income tax in the amounts and for the years as follows:

Appeal of Edward T. and Pamela A. Arviso

	Year	Amount Claimed
Edward T. Arviso	1976	$ 442.81
Pamela A. Arviso	1975	199.53
	1976	143.88
Edward T. and Pamela A. Arviso	1977	1,170.00

Pamela A. Arviso is an enrolled member of the Pala Tribe of Indians. Edward T. Arviso is an enrolled member of the Rincon Tribe of Indians. During the taxable years in question, each appellant's entire income was derived from sources within the Rincon Indian Reservation although neither appellant resided on the reservation. Each of the claims for refund here at issue was filed on the ground that the claimed amount of tax was 'illegally imposed on exempt income each appellant derived from within the reservation.

Respondent has denied each of the claims because the appellants were not residents of an Indian reservation during the taxable years at issue. This appeal duly followed. The issue presented here is whether California may tax appellants' reservation incomes because appellants were not then residents of the reservation.

Appellants and respondent agree that the issue turns on whether appellants are "reservation Indians" within the meaning of McClanahan v. Arizona Tax Commission, 411 U.S. 164 [36 L.Ed.2d 129] (1973). The United States Supreme Court there decided that Arizona was without power to apply its income tax to reservation Indians on income derived wholly from reservation sources. In that case, the plaintiff, Rosalind McClanahan, was an enrolled Navajo who both lived and worked on the Navajo reservation. The United States Supreme Court held that where the Congress had reserved a portion of territory within a state, such as the Navajo reservation, and retained absolute jurisdiction over the tribes, the state's taxing power was preempted. In short, the state could not exact its income tax from reservation earned income of a reservation Indian.

Presented here is the question whether California can impose its income tax on enrolled Indians whose income is earned on the reservation but who reside in California off the reservation. The reasoninq of the court in Dillon v. State of Montana, 451 F.Supp. -168

(1978), reversed on other grounds, 634 F.2d 463 (1980), appears compelling. On the authority of McClanahan, that court refused to uphold the application of Montana's income tax to the reservation earned income of enrolled Indians who resided on the Crow reservation in Montana. That court, however, upheld the application of Montana's income tax on the reservation earned income of enrolled Indians who resided off the reservation. That court reasoned that the situs of the income was where the taxpayer lived, not where the taxpayer worked. So the state could impose its tax on Indians residing in Montana but off the reservation without invading the exclusive jurisdiction of the Unite? States with respect to the tribes. In other words, residency on the reservation is necessary to qualify an enrolled Indian as an exempt "reservation Indian" within the meaning of McClanahan.

Appellants have supplied affidavits to the effect that both appellants had constant and close social and occupational ties with t'ne reservation community and were regarded as members by that community. Appellants have explained that they resided in Vista, California, because no suitable reservation housing was available during the periods at issue. Appellants argue that the term "reservation Indian" as used in McClanahan is not limited to those Indians who reside on a reservation, but includes all Indians who regard themselves as reservation Indians and who arc so regarded by the Indian community. But appellants have offered no persuasive authority in support of their position.

We find the reasoning of the court in Dillon to be decisive of the matter here at issue. Federal preemption of a state's taxing power must be found in the laws and treaties of the United States as construed by the courts; and the subjective opinions of the taxpayers and members of their community are immaterial.

Accordingly, we will sustain respondent's assessments.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Edward T. and Pamela A. Arviso for refund of personal income tax in the amounts and for the years as follows:

	Year	Amount Claimed
'Edward T. Arviso	1976	$ 442.81
Pamela A. Arviso	1975	199.53
	1976	143.88
'Edward T. and Pamela A. Arviso	1977	1,170.00

be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member

_____, Member