

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24796
[Redacted])	
Petitioners.)	
)	DECISION
_____)	

On December 20, 2011, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax and interest for taxable year 2008 in the total amount of \$5,133.

On February 17, 2012, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers requested an informal hearing which was held on August 30, 2012. Present at the hearing were [Redacted], and Mr. [Redacted], Attorney at Law. Present for the Tax Commission were Tax Policy specialist, [Redacted] and Deputy Attorney General, [Redacted]. Upon conclusion of the hearing, the taxpayers' attorney requested the opportunity to conduct additional research and provide the Commission with a final statement at a later date. On December 17, 2012, the Commission received from [Redacted] a document entitled, Taxpayers'/Protestants' Post-Hearing Statement. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

The taxpayers timely filed their 2008 Idaho resident individual income tax return. The Income Tax Audit Bureau (Bureau) reviewed the taxpayers' return and determined there were three issues that needed to be examined: the capital gain deduction, the deduction for health insurance premiums, and the cash contributions on Schedule A.

The Bureau contacted the taxpayers and informed them that their 2008 Idaho income tax return was being audited. The Bureau requested additional documentation for the three previously mentioned issues. The taxpayers provided adequate substantiation related to the capital gains deduction and the deduction for health insurance premiums, therefore, these deductions were accepted as filed. The documentation received pertaining to the cash contributions showed that the majority of the deductions claimed were for expenses incurred during their mission trip to [Redacted]. Due to the length of the taxpayers' [Redacted], 18 months, the auditor determined the taxpayers' "tax home" had shifted to [Redacted] and therefore they could not claim all of the expenses claimed as charitable contributions. The auditor adjusted the taxpayers' return and sent them a Notice of Deficiency Determination.

The taxpayers, through their appointed representative, protested the auditor's determination. The representative stated that the taxpayers have been long time Idaho residents and considered Idaho to be their "tax home" when they departed for their [Redacted]. According to the representative, the taxpayers had no intention of ever becoming [Redacted] residents or establishing a new "tax home" in [Redacted]. The taxpayers' protest letter also stated that because the taxpayers' [Redacted] call was for a definite period of time, their tax home did not change, and they are allowed to deduct their charitable contributions while away from home.

The Bureau referred the matter for administrative review, and the Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers responded to the Tax Commission's letter and an informal hearing was conducted. The Tax Commission has considered all information presented by the taxpayers' accountant and their attorney, both prior to and following the informal hearing and hereby issues its decision.

ISSUE

The issue in this case is whether the taxpayers' out-of-pocket expenses, incurred while rendering gratuitous service to a charitable organization in another state for a period of 18 months, are deductible as charitable contributions.

FACTS

[Redacted] have been long time Idaho residents. [Redacted] was born and raised in Idaho and attended high school and college in Idaho. The [Redacted] raised a family in Idaho. [Redacted] started his own business, [Redacted], in 1978 and worked in his business until he sold it in 2006. In April 2007, the [Redacted] received a [Redacted] call from their church, The [Redacted]. They were called to serve an 18 month mission assignment for the [Redacted].

The [Redacted] owned many different homes in [Redacted] throughout the years, and in taxable year 2000 they purchased a large tract of land with hopes of building a home on the land in the future. The [Redacted] did not begin construction on the new home prior to leaving on their [Redacted], but they did take steps to ready the property and intended to complete the process upon their return to Idaho. Shortly before leaving for [Redacted], the [Redacted] sold the [Redacted] home they had been living in. They put the majority of their belongings in storage and headed for [Redacted] with not much more than suitcases of clothes and their car.

The [Redacted] intention was to return to Idaho after completing their [Redacted]. However, during their [Redacted] elderly father, who resided in [Redacted], suffered a minor stroke. Therefore, upon completion of their [Redacted] service, instead of returning to Idaho, the [Redacted] decided to move to [Redacted] to assist with [Redacted] father's care. The [Redacted] purchased a home in [Redacted] in December, 2008, and still reside in that home today.

APPLICABLE LAW AND RATIONALE

Internal Revenue Code (IRC) section 170 allows a deduction for any qualified charitable contributions made during the taxable year. While no deduction is allowed for a contribution of services, the unreimbursed expenses associated with provided a service may be deductible.

Treasury Regulation 1.170A-1(g) states: Contributions of services- No deduction is allowable under section 170 for a contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization contributions to which are deductible may constitute a deductible contribution. For example, the cost of a uniform without general utility which is required to be worn in performing donated services is deductible. Similarly, out-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible. For the purposes of this paragraph, the phrase *while away from home* has the same meaning as that phrase is used for purposes of section 162 and the regulations thereunder.

Internal Revenue Code (IRC) section 162(a)(2) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business, including travel expenses while away from home in the pursuit of a trade or business.

For travel expenses to be deductible, they must satisfy the following three conditions: (1) they must be ordinary and necessary, (2) they must be incurred while away from home, and (3) they must be incurred in pursuit of a trade or business. Travel expenses incurred in association with an indefinite or permanent work assignment are generally nondeductible. Travel expenses paid or incurred in connection with a temporary work assignment away from home are deductible under IRC section 162(a) (2).

In the present case, in order for the [Redacted] to be allowed a deduction for reasonable travel expenses under IRC section 170, they must meet the requirements of IRC section 162; the expenses must have been incurred while “away from home.” The determination therefore must

be made as to the location of the [Redacted] “tax home”, what constitutes “away from home”, and was their 18 month assignment considered permanent or temporary.

A taxpayer’s home for purposes of IRC section 162 is the person’s regular or principal place of business, or if the taxpayer has no regular or principal place of business, then the taxpayer’s “regular place of abode in a real and substantial sense.” See Rev. Rul. 73-529, 1973-2 C.B. 37.

Revenue Ruling 83-82, 1983-1 C.B. 45, provides that, for purposes of the deduction for travel expenses under section 162 (a) (2) of the Code, if the taxpayer anticipates employment away from home to last less than 1 year, then all the facts and circumstances are considered to determine whether such employment is temporary. If the taxpayer anticipates employment to last (and it does in fact last) between 1 and 2 years, Rev. Rul. 83-82, provides a rebuttable presumption that the employment is indefinite. The taxpayer may rebut the presumption by demonstrating certain objective factors set forth in the revenue ruling. For employment with an anticipated or actual stay of 2 years or more, Rev. Rul. 83-82, holds that such employment is indefinite, regardless of any other facts or circumstances. All the factual situations in Rev. Rul. 83-82, 1983-1 C.B. 45 involve employment in a single location for more than 1 year.

Section 1938 of the Energy Policy Act of 1992, Pub. L. No. 102-486, amended section 162 (a)(2) of the Code to provide that a taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year. This amendment applies to any period of employment in a single location if such period exceeds 1 year. See H.R. Conf. Rep. No. 102-1018, 102d Cong., 2d Sess. 429, 430 (1992). Thus, section 162 (a) (2), as amended, eliminates the rebuttable presumption category under Rev. Rul. 83-82, 1983-1 C.B. 45 for employment lasting between 1 and 2 years, and shortens the 2-year limit under that ruling to 1 year. The amendment is effective for costs paid or incurred after December 31, 1992.

Because the [Redacted] mission trip took place in 2008, and was for a period of 18 months, based on the above revenue ruling, their assignment would not be considered temporary and the travel expenses not deductible. However, the conference report included a statement related to taxpayers in the same positions as the [Redacted]. The report stated the change was

“not intended to alter present law with respect to volunteer services to charities described in code section 501 (c) (3).” H.R. Conf. Rep. No. 1018, 102d Cong., 2d Sess. 430 (1992). (Present law, according a footnote in the report, is Rev. Rul. 83-82.) One could assume, therefore, that it was the intent of Congress to have the facts and circumstances analysis of Rev. Rul. 83-82 continue to apply to volunteer positions lasting more than one year but less than two.

For years after 1992, determining whether an assignment was temporary or permanent with respect to IRC section 162 (a)(2) became slightly easier with the one year test. However, as mentioned previously, it is assumed this change was not meant to apply to those taxpayers like the [Redacted]. One must then refer to IRC section 162 (a)(2) prior to the amendment for the rules to determine whether the charitable expenses incurred with the [Redacted] tax home.

These rules are summarized in Rev. Rul. 83-82. If employment, or in this case charitable activity, was anticipated to last for less than one year, the determination was made on the basis of the facts and circumstances. If employment was anticipated to last and did in fact last for one year or more, there was a presumption that the employment was not temporary. If, the employment lasted less than two years, this presumption could be rebutted if the taxpayer clearly demonstrated (by objective factors) that the employment was realistically expected to last less than two years, that the taxpayer would return to the claimed tax home after the job ended, and that the claimed tax home was the taxpayer’s regular place of abode in a real and substantial sense.

There are three objective factors that may be used to determine the bona fide nature of the taxpayer’s assertion that the claimed abode is the taxpayer’s regular place of abode in a real and substantial sense. These factors are:

- (1) Whether the taxpayer has used the claimed abode (for purposes of the taxpayer’s

lodging) while performing work in the vicinity thereof immediately prior to the current job and the taxpayer continues to maintain bona fide work contacts in that area during the alleged temporary employment;

(2) Whether the taxpayers living expenses incurred at his claimed abode are duplicated because his business requires him to be away from the abode; and

(3) Whether the taxpayer

(a) has a member or members of his family currently residing at his claimed abode, or

(b) continues to currently use the claimed abode frequently for purposes of his lodging.

The answer to the question of whether an assignment is temporary or indefinite as it relates to the deductibility of expenses while “away from home” is not always clear. The deductibility often hinges on facts and circumstances and has given rise to much litigation. In Blankenship v. Commissioner, T.C. Memo 1979-366 a 17 month employment was determined to be temporary and in Roblin v. Commissioner, T.C. Memo 1970-186, a 20 month employment was also determined to be temporary. In contrast, in Monroe v. Commissioner, T.C. Memo 1979-100, a 13 month employment was determined to be indefinite and in Pazden v. Commissioner, T. C. Memo 1977-139, it was determined a 19 month employment was indefinite.

CONCLUSION

In the present case, the [Redacted] mission assignment was from April 2007 to September 2008. Because the [Redacted] trip was more than one year but less than two, the Commission looked at the objective factors used to rebut the presumption of indefiniteness, and whether or not the [Redacted] met the three factors to be considered away from home. The Commission finds the [Redacted] did not satisfy the claimed abode factors.

After the [Redacted] received their mission call they sold their home in [Redacted],

placed their furniture and other belongings in storage and moved [Redacted]. While they claim to have a home available to them, the Commission finds they did not maintain a home in Idaho in a real and substantial sense. The [Redacted] did not duplicate living expenses and while it may have been their intent to return to Idaho upon completion of the [Redacted], they in fact did not. At the time the expenses were incurred, the [Redacted] had no "home in Idaho within the meaning of IRC section 162 (a)(2). The [Redacted] are not allowed a charitable contribution deduction for the expenses they incurred performing gratuitous services in taxable year 2008.

THEREFORE, the Notice of Deficiency Determination dated December 20, 2011, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2008	\$4,538	\$814	\$5,352

Interest is calculated through June 14, 2013.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
