

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 25713
[Redacted],)
)
)
Petitioner.) DECISION
)
_____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated March 19, 2013, asserting income tax, penalty, and interest for taxable years 2009 through 2011, in the total amount of \$22,686. Petitioner disagreed that he was not a qualified individual for the purposes of the foreign earned income exclusion. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner timely filed his Idaho individual income tax returns for taxable years 2009, 2010, and 2011. Petitioner excluded foreign earned income on each of those returns. As part of the Income Tax Audit Bureau’s (Bureau) project to determine the validity of the foreign earned income exclusion, Petitioner’s 2009, 2010, and 2011 Idaho individual income tax returns were selected for examination. The Bureau notified Petitioner of its intent to examine his returns and requested specific information from Petitioner to support the foreign earned income exclusion. Petitioner provided the information the Bureau requested. The Bureau reviewed the documentation and information Petitioner provided and determined Petitioner did not meet the requirements of a qualified individual; in that he did not have a tax home in the foreign country because his abode remained in the United States while he was in the foreign country. The Bureau corrected Petitioner’s 2009, 2010, and 2011 Idaho income tax returns and sent him a Notice of Deficiency Determination.

Petitioner protested the Bureau's determination, stating the Bureau's determination is incorrect based upon the facts and circumstances and the applicable law. Petitioner stated Internal Revenue Code (IRC) section 911(d)(3) defines tax home for the purposes of the foreign earned income exclusion and that his tax home was his regular place of business, in [Redacted]. Petitioner stated the concept of abode is not relevant in his case, and the cases cited by the Bureau are no longer relevant because the law changed since those cases were decided. Petitioner stated his work schedule was not the same as in the cases cited; he was not on a rotation schedule. Petitioner stated the Bureau's determination of his abode was based upon limited information and not qualifications based on U.S. income tax law.

The Bureau acknowledged Petitioner's protest and referred the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioner a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner requested a telephone hearing, which was held on January 31, 2014. Petitioner provided additional information at the hearing that was added to the information previously obtained.

Petitioner began working for [Redacted] in December 2008, as a [Redacted] in [Redacted]. Petitioner was employed as an [Redacted] and oversaw projects such as [Redacted] and [Redacted]. He also managed [Redacted]. Petitioner's employment contracts were for one year terms that could be extended at the request of Petitioner and approval of [Redacted]. Petitioner extended his employment with [Redacted] until he was laid off in February 2013. Petitioner's work schedule was 60 hours per week, five days a week. Petitioner stated he had time off two to three times per week. Petitioner stated he regularly worked alongside [Redacted].

Petitioner's living accommodations in [Redacted] were employer provided in a "concrete village" located on a military base. Petitioner shared housing with one other contractor. Petitioner furnished his unit with a TV, DVD player, bedding, rugs, pictures, and chairs. Petitioner's unit did not have kitchen facilities, but a kitchen was available at the [Redacted]. Petitioner stated the military provided most of his meals. Petitioner stated he was responsible for the minor upkeep of his living unit, which comprised mainly of cleaning and changing light bulbs. Petitioner stated laundry facilities were available and he provided most of his clothing from local shops. However, Petitioner's employer did provide him with a work uniform.

Petitioner's employment contract allowed him two 12-day vacations during the deployment contract. Petitioner stated he traveled to [Redacted] in 2009, but usually came back to the United States to visit family and friends, and as of November 2010, his wife. Petitioner stated he paid his transportation in and out of [Redacted], but was reimbursed up to \$2,500 by his employer. Petitioner stated he was usually out of country two times a year.

Petitioner's off-duty time in [Redacted] was spent shopping, going to movies and museums, dining out, camping in the desert, and boating in [Redacted]. Petitioner stated he attended a [Redacted] in [Redacted] where he socialized and worshiped with [Redacted] and other ex-pats living in [Redacted]. Petitioners stated he observed the religious practices of [Redacted] out of respect for his [Redacted] counterparts.

Petitioner stated his personal grooming, i.e. haircuts, were done downtown. Petitioner stated he attended weddings and funerals of the [Redacted] he knew and socialized with outside of work. He would often visit with them in their homes. Petitioner stated he would also go to opening events in the area.

Petitioner stated his free time was his to do with whatever he wanted. Petitioner stated his employer had two SUVs that were available for his use at any time. Petitioner had a [Redacted] driver's license, so he was free to come and go as he pleased. Petitioner stated he was also given a residency permit, a Civil Identification card, and a [Redacted] medical identification card.

In October 2000, Petitioner was discharged from the military. It is not known whether Petitioner was married at that time, but he was married to a [Redacted] woman that he separated from in 2009. Petitioner's divorce was finalized in March or April 2010.

Prior to going to [Redacted], Petitioner worked for [Redacted] in [Redacted]. It was there Petitioner met his current wife. Petitioner and current wife married in November 2010. Petitioner stated that up until he married his current wife, his only connections to Idaho were his parents, a vehicle in storage, and an Idaho driver's license.

LAW AND ANALYSIS

IRC section 911 provides for the exclusion from taxable income an amount of income earned from sources within a foreign country or countries which constitutes earned income attributable to services performed by a qualified individual. IRC section 911(d)(1) defines a qualified individual as,

(1) Qualified individual.

The term "qualified individual" means an individual whose tax home is in a foreign country and who is-

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

IRC section 911(d)(3) defines the term “tax home” for purposes of IRC section 911 as,

(3) Tax home.

The term “tax home” means, with respect to any individual, such individual’s home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States. (Underlining added.)

Treasury Regulation 1.911-2(b) further clarifies tax home for purposes of IRC section 911.

(b) Tax home. For purposes of paragraph (a)(i) of this section, the term “tax home” has the same meaning which it has for purposes of section 162(a)(2) (relating to travel expenses away from home). Thus, under section 911, an individual’s tax home is considered to be located at his regular or principal (if more than one regular) place of business or, if the individual has no regular or principal place of business because of the nature of the business, then at his regular place of abode in a real and substantial sense. An individual shall not, however, be considered to have a tax home in a foreign country for any period for which the individual’s abode is in the United States. Temporary presence of the individual in the United States does not necessarily mean that the individual’s abode is in the United States during that time. Maintenance of a dwelling in the United States by an individual, whether or not that dwelling is used by the individual’s spouse and dependents, does not necessarily mean that the individual’s abode is in the United States. (Underlining added.)

To be allowed the foreign earned income exclusion, the taxpayer must have a tax home in the foreign country and he must either be outside the United States for a period of 330 days in a consecutive 12-month period or be a bona fide resident of the foreign country. As a qualifier to the tax home requirement, the taxpayer is not considered to have a tax home in the foreign country if his abode is in the United States during the period he is in the foreign country.

The Bureau determined Petitioner had an abode in Idaho (the United States), therefore, Petitioner did not have a tax home in a foreign country and Petitioner was not a qualified individual eligible for the foreign earned income exclusion. The Bureau’s determination was primarily based

upon responses Petitioner made on a questionnaire the Bureau asked Petitioner to complete. On the questionnaire, Petitioner stated his housing was provided by his employer, his wife lived in his home in Idaho, he used an Idaho address for important documents, he maintained an Idaho driver's license, and he spoke very little [Redacted]. From this, the Bureau determined Petitioner's familial, economic, and personal ties to the United States were far stronger than his ties to [Redacted], which meant Petitioner's abode was in the United States.

Petitioner argued his regular place of business was in [Redacted] and, therefore, the concept of abode was not relevant. Since Petitioner's tax home was in [Redacted], he was a qualified individual for the foreign earned income exclusion. Petitioner also argued that his situation is distinguishable from the cases the Bureau cited in its determination. Petitioner stated where the individuals in those cases did not or could not meet the physical presence test, his physical presence outside the United States exceeded the required number of days.

"Abode" is not defined in IRC section 911 or the regulations thereunder. However, the courts have examined the issue and determined, in the context of IRC section 911, that abode is directly associated with a taxpayer's ties, i.e. familial, economic, and personal. See Harrington v. Commissioner, 93 T.C. 307-308, (1989); Daly v. Commissioner, T.C. Memo. 2013-147, 2013; Struck v. Commissioner, T.C. Memo. 2007-42, 2007; Eram v. Commissioner, T.C. Memo. 2014-60, 2014. The courts' methodology is to examine and contrast a taxpayer's domestic ties with his or her ties to the foreign country in which the taxpayer claims a tax home in order to determine whether the taxpayer's abode was in the United States during a particular period. Eram v. Commissioner, Id. Even though a taxpayer may have some limited ties to a foreign country during a particular period, if the taxpayer's ties to the United States remain strong, the courts have held that the taxpayer's abode

remained in the United States, especially when the taxpayer's ties to the foreign country were transitory or limited during that period. Harrington v. Commissioner, 93 T.C. at 308.

Petitioner stated that his regular place of business was in [Redacted] so the concept of abode is not relevant. However, as discussed in Harrington v. Commissioner, Id. the requirement that the taxpayer not have an abode in the United States is a requirement in addition to having a tax home in the foreign country. See also IRC section 911(d)(1). Ultimately, the focus is on Petitioner's contact with the culture and society of the foreign country in which he worked. Jones v. Commissioner, 927 F2d. 849, (1991).

In addition to the familial, economic, and personal ties, and the cultural and social contacts within the foreign country, the Jones court made reference to the additional living expenses incurred by the taxpayer. In the present case, Petitioner incurred no housing costs, nor did he incur much in the cost of meals. However, all his entertainment, recreation, clothing (other than a uniform), and personal care were provided by Petitioner. Petitioner was reimbursed for some of his travel expenses, but the balance was left for him to pay.

In determining where Petitioner had the stronger ties for the determination of his abode, and hence, his tax home, the Tax Commission considered all the facts and circumstances surrounding the relevant periods. Petitioner did have familial and personal ties in the United States during the relevant period. Petitioner had economic and personal ties in [Redacted] during the relevant period. Petitioner did not have familial ties in [Redacted] during the relevant period, however, during the majority of the period Petitioner was separated from his ex-wife or single. It was not until late in 2010 that Petitioner married again, and the decision that Petitioner's wife remain in Idaho was a combination of her choice and the cost of living in [Redacted], not a condition of working in [Redacted] See Harrington v. Commissioner, 93 T.C.

297, (1989) and Daly v. Commissioner, T.C. Memo 2013-147. As for the maintenance of a dwelling in the United States that is used by a spouse (Treasury Regulation section 1.911-2(b)), in this case, there is no evidence Petitioner maintained a dwelling in the United States until after he remarried in November 2010, and that dwelling was Petitioner's wife's home before they married. Furthermore, a spouse who chooses to remain in the United States is not necessarily indicative of an individual's abode. Jones v. Commissioner, 927 F2d. 849, 855 (1991).

In some sense of the word Petitioner had "strong" ties in the United States (his wife, parents, and other family); however, the preponderance of the evidence shows that Petitioner had significant ties to [Redacted] and that his dwelling place in [Redacted] was more than just a place to sleep. Petitioner cultivated friendships, he mingled with the locals in their environment, he received a residency permit, Civil Identification card, and a [Redacted] medical identification card, he was able to move around the country, he was not limited to base activities, and he observed some of the religious practices of the country. Petitioner also continued to renew his employment contract, in furtherance of his career, until he was laid-off in 2013. Considering all the facts and circumstances, the Tax Commission finds that Petitioner's abode was in [Redacted] for the relevant periods. Therefore, Petitioner's tax home was in [Redacted].

CONCLUSION

Seeing that Petitioner is a citizen of the United States, that he was physically present in a foreign country for a full 330 days during relevant periods for taxable years 2009, 2010, and 2011, and that his tax home was in a foreign country, Petitioner was a qualified individual for the purposes of the foreign earned income exclusion.

THEREFORE, the Notice of Deficiency Determination dated March 19, 2013, and directed to [Redacted] is CANCELLED.

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

DATED this _____ day of _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.
