

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25827
Petitioners.) DECISION
_____)

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination dated July 2, 2013, asserting income tax and interest for taxable years 2010 through 2012, in the total amount of \$22,475. Petitioners disagreed that [Redacted] was not a qualifying individual for the purposes of the foreign income exclusion. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners timely filed their Idaho individual income tax returns for taxable years 2010, 2011, and 2012. Petitioners 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 income exclusion, Petitioners’ 2010, 2011, and 2012 Idaho individual income tax returns were selected for examination. The Bureau notified Petitioners of its intent to examine their returns and requested specific information from Petitioners to support the foreign income exclusion. Petitioners provided the information the Bureau requested. The Bureau reviewed the documentation and information Petitioners provided and determined [Redacted] did not meet the requirements of a qualifying individual. The Bureau determined [Redacted] 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; [Redacted] also claimed away from home employee business expenses.

The Bureau corrected Petitioners' 2010, 2011, and 2012 Idaho individual income tax returns and sent them a Notice of Deficiency Determination.

Petitioners protested the Bureau's determination, stating that [Redacted] lived and worked in [Redacted] and has for many years. Petitioners stated [Redacted] met the tax home requirement as determined in Internal Revenue Code (IRC) section 911 and he met the physical presence test for being in a foreign country. Petitioners provided additional documentation, which the Bureau reviewed. The Bureau's position remained unchanged, so the Bureau acknowledged Petitioners' protest and referred the matter for administrative review.

The Tax Commission reviewed the matter and sent Petitioners a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. [Redacted] and Petitioners' representative requested a meeting with the Tax Commission, wherein they provided the following information.

[Redacted] is a United States citizen and he began working for [Redacted] in 2008. [Redacted] contracts with [Redacted] were one year renewable contracts, as long as his work was satisfactory. [Redacted] contracts were all "at will" contracts.

[Redacted] living accommodations were provided by his employer. He lived in an apartment in a multi-national village or private compound. [Redacted] apartment had its own bathroom, cable TV, refrigerator, and a hot plate. [Redacted] meals were also provided by his employer, however, he could provide for himself if he wanted something outside the rigid meal times of institutionalized feeding.

[Redacted] does not have an [Redacted] driver's license. He did, however, maintain his Idaho driver's license. [Redacted] did not use the [Redacted] banks. ATMs were available for getting cash and he was encouraged to use [Redacted] currency. [Redacted] paid for his medical

needs and his food when not eating in the cafeteria. [Redacted] also paid for his travel/vacations back to the United States. Petitioners stated [Redacted] usually takes his vacations in the United States, but there was one occasion when the family met [Redacted] in Europe for a European vacation.

Petitioners stated [Redacted] spent his free time playing Ping-Pong, using the gym facilities, shopping, and socializing in the garden area of the village. Petitioners stated [Redacted] has a group of people, close friends, within the village that he associates with. Some are co-workers, but not many, if any, are locals. Petitioners stated [Redacted] does have family in [Redacted] but he does not visit them. Visitors are welcome in the village, but it is guarded by a private company. Petitioners stated [Redacted] does have access to the local community, however, there are restrictions depending on the security threat level. Petitioners stated [Redacted] provided company vehicles for employee use.

Petitioners stated the village where [Redacted] lives is located in a residential neighborhood near a school. The village complex is leased by the various employers from the [Redacted] owners of the property. The complex is guarded by a separate private security company. Petitioners stated that since their family was all native [Redacted], they could easily relocate back to [Redacted] to live with [Redacted], however, they would have to pay for the move and [Redacted] is not agreeable to going back to [Redacted].

Some questions the Tax Commission asked, [Redacted] and Petitioners' representative could not answer. Since [Redacted] was still in [Redacted], the Tax Commission presented the questions to Petitioners and [Redacted] responded to them via e-mail.

[Redacted] stated he furnished his apartment with rugs, blankets, sheets, shower curtains, pots and pans, speakers, floor heaters, bed coverings, bathroom furniture, a desk, a microwave

oven, a hot plate, a table, and decorations for the walls. This is what he did to make the apartment more homey and comfortable.

[Redacted] stated he ate at the Village cafeteria only occasionally because of food poisoning and the rigid hours. He stated it was more convenient and less risky to eat out. [Redacted] stated he would buy food and prepare it himself or order food from the local [Redacted] vendors.

[Redacted] stated his housing expenses were all paid by his employer. He provided for his own cleaning, some meals, and his entertainment. [Redacted] stated his recreational activities included Ping-Pong, exercise, watching movies, and talking to friends in the community. He often enjoyed dinner with friends in his apartment or at their residence. He stated he enjoyed watching politics, news, and international broadcasts with his friends. He also listened to poetry and music with his friends. [Redacted] stated he is an avid fan of [Redacted], the most popular television program in [Redacted] (similar to [Redacted]). [Redacted] stated he watched Cricket and soccer, and he participated in [Redacted], [Redacted], [Redacted], [Redacted], and the traditional [Redacted] and American holidays.

[Redacted] stated he has about 15 close friendships inside and outside his work environment. Some of those friendships are with the [Redacted] he works with in his field teams. [Redacted] stated his friendships within the Village were not only with Americans, they were with individuals from various parts of the world including the [Redacted], [Redacted], and [Redacted].

[Redacted] stated his job is overseeing field teams who work in several areas around the country. He stated he communicates with them daily and often visits with them. [Redacted] stated his restrictions to the community vary depending on the security level. He stated it can be

as simple as checking out a company car to not being allowed outside the village without permission. [Redacted] stated he goes outside the village to [Redacted] doctors and hospitals as needed.

[Redacted] stated he rarely gets a day off and, most recently, it has only been Friday afternoon. [Redacted] walks to his office where he explains and interprets the language and behaviors of the [Redacted]. And, as previously stated, [Redacted] works with field teams, giving them training and direction, and receiving reports back from the teams. [Redacted] then edits and summarizes the reports before giving them to his managers.

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 qualifying individual. IRC section 911(d)(1) defines a qualifying 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.)

The Bureau determined [Redacted] had an abode in Idaho (the United States); therefore, [Redacted] did not have a tax home in a foreign country and [Redacted] was not a qualifying individual eligible for the foreign income exclusion.

Petitioners argued [Redacted] abode was not in the United States because he had a home in [Redacted]. Petitioners argued [Redacted] tax home was in [Redacted] and that he spent at least 330 days in a foreign country, thereby qualifying him for the foreign earned income exclusion.

The test for a qualifying individual is a two part test, 1) the individual’s tax home is in a foreign country and, 2) the individual either meets the required number of days outside the United States or he is a bona fide resident of the foreign country. (IRC section 911(d)(1)). As part of the test for the individual’s tax home, the individual’s abode cannot be in the United States.

Abode has been held to have a domestic rather than a vocational meaning; a place where the taxpayer has strong familial, economic, and personal ties. See Harrington v. Commissioner,

93 T.C. 297 (1989); Doyle v. Commissioner, 57 T.C.M. (CCH) 1439 (1989); Lemay v. Commissioner, 53 T.C.M. (CCH) 862 (1987), affd. 837 F.2d 681 (5th Cir. 1988); and Bujol v. Commissioner, T.C.M. (CCH) 762 (1987), affd. without published opinion 842 F.2d 328 (5th Cir. 1988). 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, T.C. Memo. 2014-60, 2014. 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.

In determining [Redacted] abode, the focus is on his contact with the culture and society of the foreign country in which he worked. Jones v. Commissioner, 927 F.2d 849, (1991). In addition to the cultural and social contacts within the foreign country, the Jones court referenced the additional living expenses incurred by the taxpayer. In the present case, [Redacted] incurred no housing costs, but he did pay for all his other living expenses. [Redacted] also paid for his travel expenses when vacationing in the United States.

In determining where [Redacted] 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. [Redacted] had familial, economic, and personal ties in the United States during the relevant periods. However, he also had those same ties in [Redacted] during the relevant periods. [Redacted] did not have his immediate family in [Redacted]; however, in this case it appears to have been a choice of the Petitioners rather than a condition of

working in [Redacted]. See Harrington v. Commissioner, 93 T.C. 297, (1989) and Daly v. Commissioner, T.C. Memo 2013-147. Furthermore, as stated in Treasury Regulation section 1.911-2(b), the maintenance of a dwelling in the United States that is used by a spouse does not necessarily mean an individual's abode is in the United States. Likewise, 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, [Redacted] had "strong" ties in the United States (his wife, children, a home, and rental property); nevertheless, the preponderance of the evidence shows that [Redacted] had significant ties to [Redacted] and his apartment was more than just a place to sleep. [Redacted] had friendships, he was not isolated to a specific area, he worked closely with the locals in their environment, and he continues to be employed in [Redacted]. Considering all the facts and circumstances, the Tax Commission finds that [Redacted] abode was in [Redacted] for the relevant periods. Therefore, [Redacted] tax home was in [Redacted].

However, because [Redacted] tax home was in [Redacted], [Redacted] cannot claim expenses for being away from home. Petitioners claimed employee business expenses on each of their returns. When questioned about these expenses Petitioners stated they were for [Redacted] travel expenses not covered by his employer, hotels, taxis, personal meals, and costs related to his field teams. Petitioners were asked to document these expenses to which they responded, all of [Redacted] travel expenses were provided to the auditor. The expenses documented to the auditor were [Redacted] travel back to the United States for vacations and then back to [Redacted]. If these are the employee business expenses Petitioners claimed, they are not allowed because they are personal expenses not business expenses.

CONCLUSION

Seeing that [Redacted] is a citizen of the United States, that he was physically present in a foreign country for a full 330 days during the relevant periods for the taxable years 2010, 2011, and 2012, and that his tax home was in a foreign country, [Redacted] was a qualified individual for the purposes of the foreign earned income exclusion. However, because [Redacted] employee business expenses were personal expenses, they are not deductible and are hereby disallowed.

THEREFORE, the Notice of Deficiency Determination dated July 2, 2013, and directed to [Redacted] and [Redacted] is AFFIRMED as MODIFIED by this decision.

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

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$593	\$87	\$ 680
2011	510	53	563
2012	59	3	<u>62</u>
		TOTAL DUE	<u>\$1,305</u>

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

An explanation of the Petitioners' 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.
