

presence test for the exclusion; however, he was a qualifying individual for taxable year 2012. Petitioner argued he did not have an abode in the United States, let alone Idaho, for any of those years. Petitioner stated the house he owned in Idaho was purchased as an investment and a place where his ex-wife could live. Petitioner stated the house was purchased via e-mail while he was overseas, with the final contract signing done on the day he returned to the United States on vacation. Petitioner stated he purchased the house as a single individual. Petitioner stated that when he vacationed in the United States, he would inspect the house in Idaho and then stayed with his family that happened to live in other states. Petitioner stated he did not obtain an Idaho driver's license until June 2011, when his [Redacted] license would have expired while he was overseas. Petitioner stated he did not believe justice was being served, since individuals like him could not do the things the Bureau was looking to. Whereas, an individual working in a safe environment in other countries could obtain the driver's licenses, interact with the local populous, and become part of the community.

The Bureau acknowledged Petitioner's protest and referred the matter for administrative review. However, before the Tax Commission could review Petitioner's case and send him a hearing rights letter, Petitioner contacted the Tax Commission and asked to discuss his case, since he was getting ready to go overseas again. The Tax Commission accommodated Petitioner and scheduled a telephone hearing for the following day. During the telephone hearing, Petitioner provided the following information.

Petitioner joined the [Redacted] in 1984 and served for 20 years, retiring in May 2004. Petitioner's last move with the [Redacted] was to [Redacted] in July 2000, where he retired four years later. Petitioner's home of record while in the [Redacted] was [Redacted]. After retiring from the [Redacted], Petitioner landed a job with [Redacted] in [Redacted] in August 2004.

Petitioner's employment took him to [Redacted] in February 2005, [Redacted] in August 2006, and Idaho in July 2007. Petitioner stated that when his employment began in August 2004, he went whenever and wherever [Redacted] needed him. This included [Redacted] and [Redacted] after Petitioner came to Idaho.

Petitioner was married for many years, but in March 2005 Petitioner and his wife separated and eventually divorced in 2006. Petitioner's wife stayed in [Redacted] when Petitioner hired on with [Redacted] until Petitioner's employment brought him to Idaho where she moved to see if their marriage was salvageable. Petitioner was living in a [Redacted] at the time and it was shortly after moving to Idaho that Petitioner was hired by [Redacted] for work in the [Redacted].

Petitioner began his processing, training, and preparation in October 2007, at [Redacted], [Redacted]. Petitioner left his [Redacted] in Idaho for his ex-wife to live in, and as compensation for Petitioner's military retirement in their property settlement agreement. It was after all the pipes froze during a hard winter that Petitioner purchased the house for his ex-wife to live in.

Petitioner stated he was in Idaho for a day or two at the most when he vacationed in the United States, and sometimes it was only for hours. Petitioner stated he spent his vacations with his family (parents and siblings) and they all lived outside of Idaho.

Petitioner's Idaho ties were the house he purchased in 2009, an Idaho driver's license obtained in 2011, registering to vote in 2012, and a truck in storage that was registered one time in Idaho. Petitioner stated his banking was done through a Credit Union in [Redacted], he had no family or friends in Idaho, and his social activities were limited to online [Redacted] groups.

Petitioner stated his foreign ties included his employer-provided housing, a 12x60 dry manufactured home that he shared with another contractor. Petitioner stated his manufactured

home was one of 200 homes provided on the military base. Petitioner stated there were common bathroom facilities, since the manufactured homes were not connected to water or sewer. Petitioner stated he was provided with a bed and a locker. He stated he made a table and a chair and found another chair to furnish the manufactured home. Petitioner stated he started with a laptop computer for watching movies, but later purchased a TV and DVD player. Petitioner also stated he put some photos on the wall to make it more homey. Petitioner stated his meals were employer-provided, however, on weekends he would barbeque food purchased at the Base Exchange.

Petitioner stated his work schedule was six 10-hour days. He was not allowed off the base and the only interaction he had with the locals was when they came on the base for work related activities. Petitioner stated he could drive on the base, but any travel off post was with the military or security contractors. In most cases, the only way off the base was by helicopter.

Petitioner stated he became a licensed [Redacted] while in [Redacted]. Petitioner was sponsored by another operator in the military, who operated a [Redacted]. In 2008, Petitioner's sponsor was transferred, and Petitioner took over the operation of the [Redacted]. Petitioner used this time to speak with [Redacted] in [Redacted], 20 miles to the south. Petitioner stated his social and cultural activities were limited to the [Redacted], the Sunday barbeques, and his time in the gym. Petitioner stated these were also part of his recreational activities. Petitioner stated he also took online college courses while in [Redacted].

LAW AND ANALYSIS

As the Tax Commission reviewed this case, it found there were two issues that needed to be addressed: Petitioner's residency status and the foreign earned income exclusion. The Bureau assumed Petitioner was domiciled in Idaho in 2010, 2011, and 2012, because he filed Idaho

resident individual income tax returns. However, after obtaining more facts from Petitioner, the Tax Commission is not fully convinced Petitioner filed the correct Idaho individual income tax forms.

Petitioner began filing resident Idaho individual income tax returns with taxable year 2009. Therefore, the Bureau presumed Petitioner's domicile was Idaho. However, Petitioner did not live in Idaho in 2009; his only Idaho connection was a house he purchased in 2009, an ex-wife, and maybe a [Redacted].

Petitioner's domicile from 1984 to May 2004, was his home of record, [Redacted]. When Petitioner retired from the [Redacted] he was living in [Redacted] where he and his ex-wife had purchased a house. Petitioner remained in [Redacted] until August 2004, when he went to work for [Redacted] in [Redacted]. Petitioner was in [Redacted] for about six months when [Redacted] transferred him to [Redacted]. Petitioner was in [Redacted] from February 2005 to August 2006, when [Redacted] transferred him to [Redacted]. Petitioner was in [Redacted] from August 2006 to July 2007, when he was transferred to Idaho. During all this time, Petitioner's ex-wife stayed in [Redacted]. Although Petitioner and his ex-wife were separated and were eventually divorced for most of these years, Petitioner's ex-wife did move to Idaho when Petitioner was transferred to Idaho.

Little is known about what Petitioner did during this time to identify or establish himself with any particular state. Petitioner likely lived in his [Redacted] during this time, as it was what Petitioner brought to Idaho when he moved to Idaho. Petitioner's driver's license, at the time he moved to Idaho, was from [Redacted]. He did not acquire an Idaho driver's license until June 2011. Petitioner also established a relationship with a credit union in [Redacted], which he has maintained to this day. Petitioner's Idaho connection did not occur until July 2007, and even

then, it was limited to him working in Idaho and living in a [Redacted] in Idaho. Petitioner did not get an Idaho driver's license until 2011, and he did not register to vote until 2012. Petitioner did buy a house in Idaho, but that was not until after he had left the state for nearly two years.

Domicile requires that an individual have the intent to abandon the old, the intent to acquire a new, and physical presence in the new. See IDAPA 35.01.01.030 Idaho Administrative Income Tax Rules. Petitioner's intent is not clearly seen by the facts presented. What is clear is that Petitioner was following [Redacted] for employment. Petitioner just happened to be in Idaho when he left [Redacted] and went to work with [Redacted]. When Petitioner left Idaho to work overseas, he had only been in Idaho for a little more than three months. Petitioner apparently did not feel this amount of time and/or employment connected him enough with Idaho, since he did not file income tax returns for taxable years 2007 and 2008. When Petitioner purchased the house in Idaho in 2009, Petitioner apparently saw this as enough of a connection with Idaho to start filing income tax returns. However, it is likely Petitioner would never have purchased a house in Idaho if his ex-wife had not moved to Idaho.

Based upon the facts available, the Tax Commission is not convinced Petitioner acquired Idaho as his domicile, nor is it his domicile today. Regardless, even if Petitioner's domicile was and is Idaho, Petitioner would not be considered a resident of Idaho, due to Idaho's safe harbor provision.

Idaho Code section 63-3013 defines a resident for Idaho income tax purposes. Subsection (2) provides a safe harbor for resident individuals that meet certain criteria. It states, a resident individual who is absent from Idaho for 445 days in the first fifteen consecutive months, and then is not present in Idaho for more than 60 days in a calendar year, will be considered a nonresident for Idaho income tax purposes. Petitioner left Idaho October 17, 2007,

to begin working overseas in the [Redacted]. Petitioner stated when he vacationed in the United States, he was in Idaho for only one to two days at the most. The record shows Petitioner was in Idaho on July 6, 2009, when he signed for the purchase of his house, well past the required 445 days. No other time was mentioned or attributed to Petitioner being in Idaho until possibly in 2010.

Petitioner stated he did not meet the physical presence test for the foreign income exclusion for taxable years 2010 and 2011. Petitioner stated he extended his vacation due to a surgery his mother had. Nevertheless, there is no evidence or indication Petitioner was present in Idaho during this time. The next date Petitioner is known to be in Idaho was in June 2011 when he obtained an Idaho driver's license. It is doubtful Petitioner was present in Idaho for more than 60 days in a calendar year, since he began his employment overseas. Therefore, based upon the available information, the Tax Commission found that Petitioner met Idaho's safe harbor and therefore, Petitioner is considered a nonresident for Idaho income tax purposes.

Since Petitioner is considered a nonresident, Petitioner is required to only report his Idaho source income to Idaho. Petitioner's foreign earned income is not Idaho source income. Consequently, Petitioner is not required to report his foreign earned income to Idaho, and since Petitioner is not required to report his foreign sourced income to Idaho, the foreign earned income exclusion is a non-issue for Idaho income tax purposes and need not be addressed.

CONCLUSION

Petitioner lived in Idaho for three months in 2007, before taking a job in the [Redacted]. During those three months, Petitioner did nothing, other than leave his [Redacted] in Idaho for his ex-wife, that would suggest Petitioner was a resident of or domiciled in Idaho. It was not until 2011, when Petitioner obtained an Idaho driver's license that Petitioner gave any

appearance that he had any personal ties to Idaho. Petitioner did purchase a house in Idaho, but he purchased it as an investment and for his ex-wife; Petitioner never lived in the house and owning property in a state does not, by itself, create a domicile.

Furthermore, when Petitioner left Idaho in 2007, he did not return to Idaho, nor was he present in Idaho for more days than what would disqualify him for Idaho's safe harbor. The only documented time Petitioner was in Idaho was on July 6, 2009, when he purchased his house and in June 2011 when he obtained an Idaho driver's license. Both these dates are well past the initial fifteen month period Petitioner needed to be considered a nonresident under Idaho's safe harbor provision.

Seeing that it is questionable Petitioner's domicile was Idaho, and even if it were, Petitioner met Idaho's safe harbor provision, the Tax Commission finds Petitioner was not required to report his foreign earned income to Idaho. Therefore, the Bureau's determination is reversed and Petitioner is entitled to a refund of the tax paid on his foreign sourced earned income.

THEREFORE, the Notice of Deficiency Determination dated November 20, 2013, and directed to [Redacted] is AFFIRMED as MODIFIED by this decision.

IT IS ORDERED that Petitioner receive the following REFUND of tax plus interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$(2,524)	\$(349)	\$(2,873)
2011	(1,300)	(128)	(1,428)
2012	(3,080)	(189)	<u>(3,269)</u>
		TOTAL REFUND	<u>\$(7,570)</u>

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.
